

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-6001

United States Court of Appeals FOR THE SECOND CIRCUIT

Docket No. 75-6001

PPG INDUSTRIES, INC.,

Plaintiff-Appellee,

—against—

THE HARTFORD FIRE INSURANCE COMPANY, UNITED STATES
OF AMERICA, NEW YORK STATE TAX COMMISSION, STATE
OF NEW YORK, CAR COLOR, INC. AND HENKIN & HENKIN,
ESQS.,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

PAUL J. CURRAN,
*United States Attorney for the
Southern District of New York
Attorney for the Defendant-
Appellant
United States of America
Office and Post Office Address:
United States Courthouse
Annex
One St. Andrews Plaza
New York, New York 10007
Telephone: (212) 791-1961*

JACOB F. GOTTESMAN,
*Attorney for Plaintiff-
Appellee
PPG Industries, Inc.
Office & Post Office Address:
295 Madison Avenue
New York, New York
Telephone: (212) MU-3-2626*

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PAGINATION AS IN ORIGINAL COPY

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73 CIV. 3550

CIVIL DOCKET
UNITED STATES DISTRICT COURT

DOCKET ENTRIES

Jury demand date:

~~JUDGE FRANK~~

JUDGE CONNER

D. C. Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

PRG INDUSTRIES, INC.

VS.

THE HARTFORD FIRE INSURANCE COMPANY AND
UNITED STATES OF AMERICA

For plaintiff:

JACOB F. GOTTESMAN

295 Madison Avenue, N.Y.C. 10017 MU3-2626

For defendant:

Greenhill & Speyer (for "Hartford")

56 Pine St.-NYC 10005

tel: WH 3-1550

STATISTICAL RECORD

COSTS

DATE

NAME OR
RECEIPT NO.

REC.

DISB.

J.S. 5 mailed

X

Clerk

4-5 A

J.S. 6 mailed

✓

Marshal

Basis of Action:

Docket fee

To Determine the rights of
rious claimants to the proceeds
a judgment.

Witness fees

Action arose at:

Depositions

A

JUDGE CONNER

DATE	PROCEEDINGS	
Aug 15-73	Filed Petition for removal from Supreme Court State & County	
Sep 17-73	Filed ANSWER and crossclaim of deft. United States of America.	PJC
Sep 28-73	Filed Affidavit of opposition by deft. U.S.A. to the motion of the firm of Henkin & Henkin for an order directing payment by the deft Hartford Fire Insurance Co. as in	
Oct. 4-73	Filed N.Y. State Tax Commission affdvt. and notice of motion for an order to intervene. Ret. 10-18-73	
Oct. 4-73	Filed affdvt. and notice of motion by deft. Hartford Fire Insurance Co. for an order making Car Color, Inc., Henkin & Henkin, Esqs. and the State of N.Y. debts to counter-claim, etc. RET. 10-10-73	
Oct. 5-73	Filed affdvt. and notice of motion by Henkin and Henkin, attys. pro se and for Car Color, Inc. for an order directing payment, etc. Ret/10-3-73	
Oct. 4-73	Filed ANSWER of deft. Hartford Fire Insurance Co. to cross-claim of USA and counterclaim of interpleader.	G
Oct. 12-73	Filed affdvt. and notice of motion by Henkin & Henkin, attys. pro se for an order to intervene. Ret. 10-24-73.	
Oct. 12-73	Filed affdvt. by Leonard M. Henkin in support of application as indicated.	
Oct. 24-73	Filed plttf's reply to answer of Henkin and Henkin.	
Nov. 15-73	Filed memorandum- the motions now pending in this action as indicated are hereby referred to Magistrate Harold J. Raby to hear and report. So ordered- FRANKEL, J. mailed notices.	
Jan 7-74	PRE-TRIAL CONFERENCE HELD BY Raby, U.S. MAG.	
Mar. 12-74	Filed Govt's notice motion for an Order granting summary judgment in favor of the U.S.	
Mar. 12-74	Filed Govt's memorandum of law in support of above motion	
Mar. 12-74	PRE-TRIAL CONFERENCE HELD BY Raby, U.S. MAG.	
Aug. 2-74	Filed deft. U.S.A. affdvt. of David P. Land and notice of motion for an order objecting to report of Magistrate.	
Nov. 11-74	Filed plttf's answering affirmation of Jacob F. Gottesman Filed Opinion #4422 and Order- presently before the Court is an application by the U.S. of America for an order setting aside that portion of a Report issued by Magistrate Raby on 7-25-74, which held the Government's tax liens against Car Color to be subordinate to the claim of PPG. For the reasons stated in this opinion-the motion of the U.S. is denied and the distribution determined by Magistrate Raby is affirmed. So ordered- CONNER, J. (m/n)	
Jan. 7-75	Filed deft. United States of America notice of appeal from the order filed 11-11-74. Copies to: Jacob F. Gottesman, Esq., - Henkin & Henkin, Esqs. - Greenhill & Speyer, Esqs. and Hon. Louis J. Lefkowitz. Entered- 1-8-75	
Feb. 3-75	Filed plaintiff's Affirmation in Opposition dated Sept. 28-73, in opposition to Motion by Henkin & Henkin dated Sept. 19-73.	
Feb. 3-75	Filed plaintiffs Notice of motion dated March 18-74, pursuant to Rule 56 FRCP, for summary judgment, on March 29-74 at 10:00 A.M. in Room 610.	
Feb. 3-75	Filed Defendant Hartford Fire Insurance Co., dated March 21-74, pursuant to Rule 56 for summary judgment, on March 29-74 at 10:00 A.M. in room 610. *notice of motion	
Feb. 3-75	Filed Defendant Car Color, INC. notice of motion dated March 22-74, pursuant to Rule FRCP, for summary judgment, on March 29-74 at 10:00 A.M. in room 610	
Feb. 3-75	Filed Stipulation concerning facts dated February 20-74.	
Feb. 3-75	Filed Memorandum on behalf of PPG INDUSTRIES, INC.	
Feb. 3-75	Filed Memorandum on behalf of the Attorneys with a charging lien on the judgment against the Hartford Fire Insurance Co.	
Feb. 3-75	Filed Report of U.S. Magistrate dated July 25-74.	

B

DHM, III
73-2521
232/

DEFENDANT-APPELLANT'S NOTICE OF REMOVAL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FILED ORIG
NOTICE IN
SUP. CT. NY. County
8/17/73

PPG INDUSTRIES, INC.,

Petitioner,

~~against~~

THE HARTFORD FIRE INSURANCE COMPANY,

Respondent,

-and-

UNITED STATES OF AMERICA,

Intervening Respondent..

NOTICE OF REMOVAL

Index No. 5190/72
NTH

S I R S :

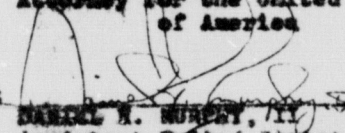
PLEASE TAKE NOTICE that a verified petition, a copy of which is annexed hereto, requesting removal of the above-captioned action, which is pending in the Supreme Court of the State of New York for the County of New York, to the United States District Court for the Southern District of New York was filed this day with the Clerk of said District Court pursuant to the provisions of 28 U.S.C. § 1402 and 28 U.S.C. §§ 1340, 1410(a), 1441(b) and 1444.

Dated: New York, New York

August 15, 1973.

Yours, etc.,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

By: 
DANIEL H. MURPHY, II
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse
Foley Square
New York, New York 10007
Tele: (212) 264-6322

DHN.III
73-2521

A 4

TO: CLERK
Supreme Court: New York County
60 Centre Street
New York, New York 10007

Abraham Blume, Esq.
New York State Tax Commission
80 Centre Street
New York, New York 10007
Attention: Frank Levitt, Esq.

Jacob P. Gettesman, Esq.
Attorney for PPG Industries, Inc.
295 Madison Avenue
New York, New York 10017

Henkin & Henkin, Esqs.
Attorneys for Car Color, Inc.
22 West First Street
Mount Vernon, New York 10550

State of New York
Unemployment Insurance Division
Building #12
State Office Building Campus
Albany, New York 12226
Attention: Mr. Henry J. Gorko

Greenhill & Speyer, Esqs.
Attorneys for The Hartford Fire Insurance Co.
56 Pine Street
New York, New York 10005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
S.D. of NEW YORK
8-15-73

PPG INDUSTRIES, INC.,

Plaintiff,

- v -

THE HARTFORD FIRE INSURANCE COMPANY
and UNITED STATES OF AMERICA,

Defendants.

PETITION FOR REMOVAL

73 Civ. 3550

MEF. ~~MEF~~

The petition of the United States of America, defendant herein, by Daniel M. Murphy, II, Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York and attorney for the petitioner, respectfully states on information and belief that:

1. This is an action to determine the rights to the proceeds of a \$7,354.29 judgment entered April 26, 1973, in this Court in favor of Car Color, Inc., and against defendant, The Hartford Fire Insurance Company.
2. Plaintiff, PPG Industries, Inc., is a judgment creditor of Car Color, Inc., pursuant to a \$12,300 judgment entered April 14, 1972.
3. Plaintiff commenced this action against defendant, The Hartford Fire Insurance Company, by a petition dated June 26, 1973, and pending in the Supreme Court of the State of New York for the County of New York. No trial has yet been had thereon.
4. The defendant, United States of America, is a tax creditor of Car Color, Inc. On October 12, 1972, a tax levy was served upon defendant, The Hartford Fire Insurance Company, demanding all monies in that defendant's possession

belonging to Car Color, Inc., but no more than \$2395.39.

The motion of the defendant United States asking to intervene in this proceeding was granted by Hon. Nathaniel T. Helman, Justice, Supreme Court of the State of New York, in open Court on August 1, 1973. A copy of the transcript of that proceeding is attached hereto.

5. Messrs. Henkin and Henkin claim an attorney's lien on the judgment proceeds. The New York State Tax Commission claims a State tax lien on such proceeds. Both parties are being given notice of this petition.

6. The defendant United States of America moved to intervene pursuant to 26 U.S.C. §§ 7401, 7403 as directed by the Attorney General of the United States with the authorization and at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury of the United States.

7. This Court's jurisdiction is under 26 U.S.C. §7402 and 28 U.S.C. §§ 1340, 2410(a).

8. This action may be removed to this Court pursuant to 28 U.S.C. §§ 1441(b), 1445.

9. Inasmuch as the United States of America is petitioner herein, no bond is required pursuant to 28 U.S.C. §1446(d).

10. Annexed hereto are copies of all process, pleadings and orders which have come to the attention of petitioner in this action.

WHEREFORE, it is respectfully requested that this

73-2321

7

action be removed to this Court for trial and determination pursuant to 28 U.S.C. 57402 and 28 U.S.C. 1343, 1345, 1346(b) and 1444.

Dated: New York, New York

August 15, 1973

Yours, etc.,

PAUL J. GORDON
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

DANIEL T. ROSENBERG
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse
Poley Square
New York, New York 10007
Tel: (212) 344-6122

10. Abraham Blume, Esq.
New York State Tax Commission
80 Centre Street
New York, New York 10007
Attention: Frank Levitt, Esq.

Jacob P. Gottsman, Esq.
Attorney for PPC Industries, Inc.
295 Madison Avenue
New York, New York 10017

Henkin & Henkin, Esqs.
Attorneys for Car Color, Inc.
22 West First Street
Mount Vernon, New York 10550

State of New York
Unemployment Insurance Division
Building #12
State Office Building, Campus
Albany, New York 12226
Attention: Mr. Henry J. Gorko

Greenhill & Spoyer, Esqs.
Attorneys for The Hartford Fire Insurance Co.
50 Pine Street
New York, New York 10005

DMM:II nc

VERIFICATION

STATE OF NEW YORK)
 COUNTY OF NEW YORK : ss.:
 SOUTHERN DISTRICT OF NEW YORK)

DANIEL H. MURPHY, II, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of New York, and as such has charge of the above-entitled action; that he has read the foregoing Petition for Removal and knows the contents thereof, and that on information and belief, he believes such contents to be true.

That the sources of deponent's information and the grounds of his belief are the pleadings attached hereto and the official records and files of the United States.

That the reason this verification is made by deponent and not by the United States of America is that the United States of America is a corporation governed by


 DANIEL H. MURPHY II,
 Assistant United States Attorney

Sworn to before me this
 15 day of August, 1973.

RALPH I. LEE
 Notary Public, State of New York
 No. 4122233 Queens County
 Term Expires March 30, 1975

A 9

SUPREME COURT : NEW YORK COUNTY

SPECIAL TERM, PART I

----- x
PBG INDUSTRIES, INC., :

Petitioner, :

-against- :

THE HARTFORD FIRE INSURANCE
COMPANY, :

Respondent.
----- x

AUG 1 1973

UNITED STATES

Index No.
5190-1972

60 Centre Street
New York, N. Y.
August 1, 1973

BEFORE: HON. NATHANIEL T. HELMAN,

Justice.

APPEARANCES:

For Henkin & Henkin : DAVID C. QUINN, ESQ.

For the United States : PAUL J. CURRAN, ESQ.,
of America U. S. Attorney for the
Southern District of
New York,
BY: DANIEL H. MURPHY 2nd, ESQ.
Assistant U.S. Attorney

For State Tax Commission : ABRAHAM BLUME, ESQ.
BY: FRANK LEVITT, ESQ.

David E. Berkman,
Official Court Reporter

A 10

THE COURT: The motion is made by an alleged judgment creditor for a direction to have the fund in the hands of the Hartford Insurance Company paid over to him in pursuit of the judgment. There are also several claims asserted here, one by the attorneys for the original claimant who request the payment of their counsel fees pursuant to a retainer arrangement.

There is an additional application by the State of New York, based on a possible tax lien which it may legally insert against the fund and there is an application by the United States Government to intervene, also for the purpose of asserting a tax lien.

Insofar as the application of the United States Government to intervene, that motion will be granted, there being no opposition thereto that the Court can find sufficient to deny such relief.

In the main motion, the Court will grant it, to the limited extent of referring all of the issues raised by the motion papers and the papers filed in opposition to an official referee, to

A 11
hear and report to the Court on the issues raised between the parties, namely, the rights of the judgment creditor as well as all of the tax creditors and the attorneys to assert their separate claims against the fund, based upon their agreements, legal rights or other claims which they may make against the fund, the referee to report to the Court after conducting a hearing with respect to all of the issues raised by the respective parties.

Settle an order here on notice to all parties after communicating with the office of the referee. The name of the referee will be inserted in the order to be submitted.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
PPG INDUSTRIES, INC.,

Petitioner,

-against-

THE HARTFORD FIRE INSURANCE COMPANY,

Respondent.
-----x

AFFIDAVIT

Index #5190/72

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOHN M. SPEYER, being duly sworn, deposes and
says:

1. I am one of the attorneys for the Hartford Fire Insurance Company, respondent herein.
2. This additional affidavit is submitted in opposition to the petitioner's motion for an order directing payment to it from Hartford Fire Insurance Company (hereinafter "Hartford").
3. Deponent now responds to the following which have been served since my affidavit of July 3, 1973:
 - (a) A warrant from State of New York, Department of Taxation and Finance, Warrant and Collection Section, in the sum of \$1148.50, apparently for withholding taxes (Exhibit C).
 - (b) Warrant and levy from State of New York, Department of Taxation and Finance, Warrant and Collection Section in the sum of \$6784.45, apparently for sales taxes (Exhibits D and E).

JUL 27 1973

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK



A00013

(c) Motion to intervene by United States Attorney.

(d) Affidavit of David C. Quinn in connection with attorney's lien.

4. Respondent Hartford is unable to determine whether this new claimant or the other claimants set forth in our affidavit of July 3, 1973 are entitled to the funds at hand.

5. Accordingly, your deponent asks this court to determine the entitlement, if any, of the New York State Department of Taxation and Finance in relation to the four other claimants previously disclosed.

6. Your deponent has no objection to the United States Government's motion to intervene as long as the rights and obligations of the Hartford Fire Insurance Co. can be finally determined, and a discharge granted upon paying out the funds on hand.

7. The statement by attorney David C. Quinn concerning the amount held by Hartford is correct, to wit, judgment, including interest totaling \$7827.75, and costs of \$45.

8. Insofar as Mr. Quinn's attorney's lien against the funds, your deponent acknowledges that there was substantial work performed by Mr. Quinn, including a two-day trial, all as set forth in his affidavit.

9. Although your deponent expresses no opinion concerning the law, it would seem only fair and equitable that Mr. Quinn be reimbursed for his time and efforts which caused the fund to become available in the first place.

JOHN M. SPEYER

Sworn to before me this

26 day of July, 1973

STATE TAX COMMISSION

Judgment Creditor

CAP COLOR, INC.

Judgment Debtor

Last Known
Address910 Nepperhan Avenue
Yonkers, N.Y.NS 807817
NS 807396
NS 808031

THE PEOPLE OF THE STATE OF NEW YORK TO: JOHN J. DIAMOND
an officer or employee of the Department of Taxation and Finance; WHEREAS, a tax has been found due to the State Tax Commission of THE STATE OF NEW YORK
the debtor named, the nature and amount of which, together with the interest and penalties thereon, are as follows:

Tax imposed by Article 22/23 of the Tax Law

Taxable period or assessment no.	Tax	Penalty and/or Interest	Total
7/1- 12/31 1971	\$	\$	\$
1971	208.91	23.56	232.47
1970	259.90	57.04	316.94
1971	115.14	18.03	133.17
	\$ 583.95	\$ 98.63	\$ 682.58

AND WHEREAS, said tax, interest and penalties now remain wholly unpaid;

NOW, THEREFORE, WE COMMAND YOU to file a copy of this warrant within five days after its receipt by you in the office of the Clerk of the County of WESTCHESTER, for entry by him, in the judgment docket, pursuant to the provisions of the Tax Law.

AND WE FURTHER COMMAND YOU, that you satisfy said claim of said STATE TAX COMMISSION for said tax with penalties and interest out of the real and personal property in said county belonging to said debtor and the debts due to him, at the time when said copy of this warrant is so docketed in the office of the Clerk of such county or at any time thereafter, and that only the property in which said debtor who is not deceased has an interest or the debts owed to him shall be levied upon or sold hereunder, and return this warrant and pay the money collected, within sixty days after the receipt thereof, to the State Tax Commission of the State of New York.

WARRANT received at 10:00 A.M.
o'clock M., on

1973, 19

To the Officer or Employee named above:

Levy and collect \$ 1148.58 with interest

at 6% per annum on \$ 1038.13

from 7/15/73 19

plus additional penalties as provided by law.

Issued at White Plains, N.Y.

the 19

STATE TAX COMMISSION

Deputy Tax Commissioner

John J. Diamond
Name and Title of Employee
Department of Taxation and Finance

JTB:11/11/73

JOHN J. DIAMOND

EXH 2

STATE TAX COMMISSION

Judgment Debtor

Last Known

Address

910 West 10th Ave.

Toledo, Ohio

 1023106
 912175 9
 93140 32
 9351 421
 9351 757

 93526827
 92607126
 93723565

THE PEOPLE OF THE STATE OF NEW YORK TO: JAMES J. ...

 officer or employee of the Department of Taxation and Finance; WHEREAS, a tax has been found due to the State Tax Commission of THE STATE OF NEW YORK
 on the debtor named, the nature and amount of which, together with the interest and penalties thereon, are as follows:

 Tax imposed
 by Article

28/29

of the Tax Law

Taxable period or assessment no.	Tax	Penalty and/or Interest	Total
5/31/71	\$ -0-	\$ 0.00	\$ 0.00
8/31/71	677.45	176.82	854.27
11/30/71	846.00	219.32	1065.32
2/2-/72	146.78	176.31	1023.09
5/31/72	846.78	132.02	998.80
8/31/72	846.78	127.13	973.96
11/30/72	846.78	100.31	947.16
2/28/73	846.78	75.43	922.31
	\$ 5157.35	\$ 1027.18	\$ 6184.53

A00015

WHEREAS, said tax, interest and penalties now remain wholly unpaid;

 THEREFORE, WE COMMAND YOU to file a copy of this warrant within five days after its receipt by you in
 office of the Clerk of the County of ... for entry by him
 on the judgment docket, pursuant to the provisions of the Tax Law.

 WE FURTHER COMMAND YOU, that you satisfy said claim of said STATE TAX COMMISSION for said tax with
 ties and interest out of the real and personal property in said county belonging to said debtor and the debts due to him
 the time when said copy of this warrant is so docketed in the office of the Clerk of such county or at any time thereafter;
 that only the property in which said debtor who is not deceased has an interest or the debts owed to him shall be levied
 or sold hereunder; and return this warrant and pay the money collected, within sixty days after the receipt thereof, to
 State Tax Commission of the State of New York.

 WARRANT received at
 on M., on 11/10/72
 19

To the Officer or Employee named above:

 Levy and collect \$ 6184.53 with interest
 at 10% per annum on \$ 5157.35
 from 11/10/72

plus additional penalties as provided by law.

 Issued at Toledo, Ohio
 the 10th day of November, 1972

STATE TAX COMMISSION

By: Deputy Tax Commissioner

 Name and Title of Employee
 Department of Taxation and Finance

A00016
TAX COLLECTOR'S LEVY

UNDER AUTHORITY OF THE TAX LAW OF THE STATE OF NEW YORK AND SECTION 5232(9)
OF THE CIVIL PRACTICE LAWS AND RULES

In the matter of THE STATE TAX COMMISSION OF THE STATE OF NEW YORK, Judgment Creditor
against COLORE, INC. Judgment Debtor.
ARTFORD FIRE INSURANCE CO. Garnishee

WARRANT NUMBER	UNPAID BALANCE OF ASSESSMENT	STATUTORY ADDITIONS	TOTAL
91,223,026	\$	\$	\$
91,247,599			
93,462,932			
93,514,431	5,757.35	1,027.10	6,784.45
93,585,757			
93,630,837			
93,687,126			
93,733,866			
TOTAL AMOUNT DUE, OWING AND UNPAID ON SUCH WARRANTS			\$ 6,784.45

True copies of the warrants listed herein are annexed hereto. Pursuant to the provisions of the Tax Law, such warrants (1) were issued by the State Tax Commission against the above named judgment debtor and other persons stated in the warrant, (2) have been docketed and entered as judgments on the dates and in the offices of the clerks of the counties set forth in the warrants, and in the amounts set forth therein, (3) are lawful executions which have been issued or reissued on the dates set forth in the warrants and (4) were duly directed to the undersigned as an officer and employee of the Department of Taxation and Finance of the State of New York with all the rights and powers of a sheriff.

It appears that you are indebted to the above named judgment debtor or that you are in possession or custody of property not capable of delivery in which you know or have reason to believe that the judgment debtor has an interest.

NOW, THEREFORE, YOU ARE REQUIRED by Section 5232(a) of the Civil Practice Law and Rules forthwith TO TRANSFER TO THE UNDERSIGNED all personal property not capable of delivery in which the judgment debtor is known or believed to have an interest now in, or hereafter coming into your possession or custody as may be necessary to satisfy the total amount due as set forth herein together with any other lawful additions including fees, costs and expenses of this levy, if any; to execute any documents necessary to affect such transfer or payment; and to comply with any and all further provisions of such section.

Payment by check or money order should be made payable to the State Tax Commission.

Dated this 13th day of July, 19

SIGNATURE

[Signature]

TITLE

Tax Compliance

Ext "E"

DEC 11:06
73-2131

A00017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

day 7/24
due 8/1/73
Filed 7/25/73

PPG INDUSTRIES, INC.,

Petitioner,

: NOTICE OF MOTION
TO INTERVENE

- against -

: Index No. 5190/72

THE HARTFORD FIRE INSURANCE CO.,

Respondent.

Supreme Ct
State of N.Y.
County of N.Y.

S I R S :

PLEASE TAKE NOTICE, that on the annexed affidavit of Daniel H. Murphy II, Assistant United States Attorney for the Southern District of New York, sworn to the ²⁴ day of ^{July} ~~August~~, 1973, the annexed proposed answer setting forth the claim for which intervention is sought, the petition, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this court at a Special Term, Part I, at the Court House thereof, on the 1st day of August, 1973, at the opening of court on that day, or as soon thereafter as counsel can be heard, for an order pursuant to §1012(a)(1), Civil Practice Law and Rules, and pursuant to §6221, Civil Practice Law and Rules, according the United States of America, the movant herein, an absolute right to intervene in the within action, directing that the said United States of America be added as a party respondent, that the petition be amended by adding thereto the name of the said United States of America

A00018

as a party respondent, and allowing the said United States of America to serve an answer, or move with respect to the petition within twenty (20) days after the entry of an order granting this motion, and for such other, further and different relief as may be just.


Dated: New York, New York

July
~~August~~ 24, 1973

Yours, etc.,

PAUL J. CURRAN,
United States Attorney for the
Southern District of New York,
Attorney for United States
of America

By:


DANIEL H. MURPHY, II
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse
Foley Square
New York, New York 10007
Tel.: 264-6336

TO:

Jacob P. Gotterman, Esq.
Attorney for PPG Industries, Inc.
295 Madison Avenue
New York, New York 10017

Haskin & Haskin, Esqs.
Attorneys for Car Color, Inc.
22 West First Street
Mount Vernon, New York 10550

State of New York
Unemployment Insurance Division
Building #12
State Office Building Campus
Albany, New York 12226

Attention: Mr. Henry J. Gortho

Greenhill & Spayer, Esqs.
Attorneys for The Hartford Fire Insurance Co.
36 Pine Street
New York, New York 10005

A00019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x

PPG INDUSTRIES, INC.,

Petitioner,

- against -

THE HARTFORD FIRE INSURANCE CO.,

Respondent.

: AFFIDAVIT

Index No. 5190/72

:

:

----- x

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

DANIEL H. MURPHY II, being duly sworn, deposes
and says:

1. I am a member of the Bar of this court and
an Assistant United States Attorney in the office of
Paul J. Curran, United States Attorney for the Southern
District of New York and attorney for the United States
of America, the intervening respondent and cross-
petitioner herein.

2. I make this affidavit in support of the
motion to intervene pursuant to CPLR §§1012, 1014, and
26 U.S.C. §7424.

3. This action is brought by the petitioner,
a judgment creditor of Car Color, Inc., to recover the
proceeds of a judgment in favor of Car Color, Inc.
against The Hartford Fire Insurance Co., respondent
herein. A copy of the petition in this action is annexed

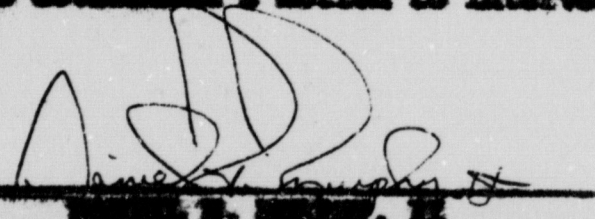
A00020

4. Prior to the commencement of the action by the petitioner, the Government filed a notice of tax lien against the insurance proceeds for taxes due the Government by Car Color, Inc. (Exhibit B).

5. The petitioner, in the original action, alleges that it has a superior lien on the insurance proceeds because of a security agreement it had with Car Color, Inc. upon the insurable property. However, the Government contends that insurance proceeds run to the insured party and not with the insured property. Therefore, the Government's tax lien has priority pursuant to Internal Revenue Code §6322.

6. That the Government has an adverse claim to the property involved in this action, and such property is being used for the satisfaction of a judgment, Section 6321 of the Civil Function Law and Rules confer upon the United States of America an absolute right to intervene in this action.

WHEREFORE, the Government's motion to intervene should be granted.


SAMUEL H. BURTON, II
Assistant United States Attorney

Sworn to before me this

24 day of July, 1973

A00021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PPG INDUSTRIES, INC.,

Petitioner,

-against-

THE HARTFORD FIRE INSURANCE COMPANY,

Respondent.

Not
ASSIGNED TO
I.C. PART

Index #
5190/72

S I R S :

PLEASE TAKE NOTICE that on the attached petition of JACOB F. GOTTESMAN sworn to June ^{16th}, 1973, the security agreement between PPG INDUSTRIES, INC. and CAR COLOR, INC., dated September 28th, 1970, the UCC (1) financing statements filed in the County Clerk's office in Westchester and with the Secretary of State on October 7th, 1970 and October 8th, 1970, respectively, the notice of restraint and sheriff's execution a motion will be made by the undersigned in, ^{Special Term} ~~EC~~ Part I of the Supreme Court of the State of New York, County of New York at the Courthouse thereof, Centre and Pearl Street, Manhattan on the ^{11th} day of July, 1973 at 9:30 A.M. or as soon thereafter its counsel can be heard why an order should not be made and entered herein pursuant to Rule 5227 of the CPLR directing the HARTFORD FIRE INSURANCE COMPANY to pay the judgment proceeds CAR COLOR, INC. recovered against the HARTFORD FIRE INSURANCE COMPANY on April 25th, 1973 in the United States District Court, Southern District of New York to the sheriff of the City of New York to be applied to the partial payment of PPG's judgment in

A00022

the sum of \$12,300.00 and for such other and further relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that answering affidavits must be served on the undersigned five (5) days before the return day of this motion.

Dated: New York City, June 26th, 1973

Yours, etc.

JACOB F. GOTTESMAN
Attorney for the Petitioner
Office & P. O. Address
295 Madison Avenue
New York, New York 10017
Telephone # MU 3 - 2626

TO: HENKIN and HENKIN, Esqs.
Attorneys for CAR COLOR, INC.
22 West First Street
Mount Vernon, New York 10550

INTERNAL REVENUE SERVICE
53 South Broadway
Yonkers, New York 10701

STATE OF NEW YORK
Unemployment Insurance Division
Building #12
State Office Building Campus
Albany, New York 12226
ATTENTION: Mr. Henry J. Gerko

GREENHILL & SPEYER, ESQS.
Attorneys for The Hartford Fire Insurance Company
56 Pine Street
New York, New York 10005

A00023

FORM 668-C
(REV. MAY 1967)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

FINAL DEMAND

DISTRICT

Manhattan

DATE

April 30, 1973

TO: Hartford Fire Ins. Company
235 Mamaroneck Ave. White Plains N.Y.

On October 12, 1972, there was served upon you a levy, by leaving with Mr. Frank Yank at 235 Mamaroneck Ave. a notice of levy, on all property, rights to property, moneys, credits and bank deposits then in your possession, to the credit of, belonging to, or owned by Car Color Inc. of 910 Nopperhan Ave. Yonkers N.Y., who was at the time, and still is, indebted to the United States of America for unpaid internal revenue taxes, together with additions provided by law which had accrued thereon at the time of levy, and which amounted at that time to the sum of \$2395.39. Demand was made upon you for the amount set forth in the notice of levy, or for such lesser sum as you may have been indebted to the taxpayer, which demand has not been met.

Your attention is invited to the provisions of section 6332, Internal Revenue Code, as follows:

SEC. 6332. SURRENDER OF PROPERTY SUBJECT TO LEVY.

(a) Requirement.—Except as otherwise provided in subsection (b), any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(c) Enforcement of Levy.—

(1) Extent of Personal Liability.—Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States for a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy. Any amount (other than costs) recovered under this paragraph shall be credited against the tax liability for the collection of which such levy was made.

(2) Penalty for Violation.—In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

(d) Effect of Honoring Levy.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary or his delegate, surrenders such property or rights to property (or discharges such obligation) to the Secretary or his delegate (or who pays a liability under subsection (c)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment. In the case of a levy which is satisfied pursuant to subsection (b), such organization shall also be discharged from any obligation or liability to any beneficiary arising from such surrender or payment.

(e) Person Defined.—The term "person," as used in subsection (a), includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

Demand is again made for the amount set forth in the notice of levy, \$ 2395.39, or for such lesser sum as you may have been indebted to the taxpayer at the time the notice of levy was served. If you comply with this final demand within five days from its service, no action will be taken to enforce the provisions of section 6332 of the Internal Revenue Code. If, however, this demand is not complied with within five days from the date of its service, it will be deemed to be finally refused by you and proceedings may be instituted by the United States as authorized by the statute quoted above.

SIGNATURE

TITLE

ADDRESS (City and State)

Patrick W. Dele

Revenue Officer

Yonkers, N.Y.

CERTIFICATE OF SERVICE

I hereby certify that this Final Demand was served by handing a copy thereof to:

NAME

Frank Yank

TITLE

Manager

PLACE

DATE

TIME

REVENUE OFFICER (Signature)

DATE

Patrick W. Dele

4/30/73

A00024

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x Index #5190/1972

PPG INDUSTRIES INC.,

Petitioner

-against-

THE HARTFORD FIRE INSURANCE COMPANY,

Respondent

-----x
MEMORANDUM IN OPPOSITION ON BEHALF
OF THE ATTORNEYS WITH A CHARGING
LIEN ON THE JUDGEMENT AGAINST THE
HARTFORD FIRE INSURANCE COMPANY.

STATEMENT

This is an application for an order pursuant to CPLR 5227 in aid of execution to direct HARTFORD FIRE INSURANCE COMPANY to pay to the Sheriff to be applied on the judgement recovered by PPG INDUSTRIES INC. against CAR COLOR INC. in this court, the amount recovered in an action by CAR COLOR INC. against said HARTFORD FIRE INSURANCE COMPANY in the United States District Court: Southern District of New York.

It is important to note the nature of this proceeding as being one of the enforcement proceedings by a judgment creditor and not an action in equity to enforce equitable rights against a fire insurance company by a holder

A00025

of a security agreement.

This memo in opposition is on behalf of the attorneys who recovered the judgment sought to be reached.

On December 23, 1971 CAR COLOR INC. sustained a loss by fire. CAR COLOR INC. was insured by THE HARTFORD INSURANCE COMPANY under policy dated December 10, 1970 which contained no mention of any mortgagee or secured party. Thereafter an action was instituted by CAR COLOR INC. against HARTFORD by HENKIN and HENKIN as its attorneys on said policy. Said attorneys had no knowledge of any security agreement.

At the time of the institution of said action it was agreed between CAR COLOR INC. and said HENKIN and HENKIN that said attorneys shall receive for their services one third of the amount to be recovered in said action and costs.

After lengthy pretrial examinations and trial CAR COLOR INC. recovered a judgment for \$7,354.29 which with interest is \$7,827.75 and \$45.00 costs. The attorneys claim a charging lien of one third \$2,609.25 plus \$45.00 costs.

PPG INDUSTRIES had a claim against CAR COLOR INC., sued it in New York, recovered a judgment against it which is the basis of this application, had issued a garnishee against THE HARTFORD on the same claim in an action against

A00026

CAR COLOR INC. in Georgia and instituted an enforcement proceeding in New York against HARTFORD to reach proceeds of a judgment obtained by CAR COLOR INC. against HARTFORD through HENKIN and HENKIN.

Having asserted consistently heretofore that the proceeds of the policy is the property of CAR COLOR INC., on this application said PPG INDUSTRIES INC. attempts to also claim that by virtue of a security agreement executed Septmeber 28, 1970, long prior to issuance of fire policy on December 10, 1970, it is entitled to proceeds of said policy as against the attorneys who recovered judgment thereon so as to defeat their charging lien.

POINT I

THE CHARGING LIEN OF THE ATTORNEYS
IS PRIOR TO CLAIMS OF JUDGMENT
CREDITORS OF THE CLIENT.

In this case the fire insurance policy was to CAR COLOR INC. There was no loss payable clause. The attorneys had no knowledge of any other claims. Certainly they should be protected as it was their services that created the fund.

PPG INDUSTRIES INC. makes this application as a judgment creditor of CAR COLOR INC. As such it "may only assert and enforce their claims against the portion of the judgment remaining after the amount of the attorneys' lien has been paid or otherwise discharged". Application of Peters, 271 A.D. 518; 67 N.Y.S. (2) 305; Fliashnick vs Burke,

AUG 27

176 A.D. 367, 162 N.Y.S. 867. See also Abbondola vs Kaweck
177 M 122, 29 N.Y.S. (2) 530, where the court said:

The equitable assignment could only be one which became effective upon the receipt of the proceeds of the recovery. These proceeds did not arise until the attorney's efforts and skill brought about the determination of the liability of the defendant for the accident. It is only the net amount received by the father after the payment of expenses incurred to obtain the recovery to which the equitable lien might attach. Had the assignee attempted to collect, it would have incurred similar expense in obtaining the recovery. It is only that the expense, so incurred in bringing the gross recovery into being, be deducted before considering the balance as the "proceeds" to which a lien might attach.

POINT II

ANY RIGHTS UNDER SECURITY AGREEMENT
MERGED INTO THE JUDGMENT RECOVERED
BY PPG INDUSTRIES INC. AGAINST CAR
COLOR INC. AND IT IS ESTOPPED TO ASSERT
THEM AGAINST THE ATTORNEYS.

PPG INDUSTRIES INC. at the time it instituted an action against CAR COLOR INC. was aware of the security agreement it had and of the rights it now claims, yet instead of seeking to enforce such rights by an action against HARTFORD, it instituted an action and obtained a judgment on its claim against CAR COLOR INC. in New York and in this enforcement proceedings seeks to enforce such judgment.

Certainly under those circumstances its claim has merged into judgment. Gray vs Richmond Bicycle Co,

A00028

167 N.Y. 348; 60 N.E. 663; Hellstern vs Hellstern, 279 N.Y. 327, 18 N.E. (2) 296.

Furthermore with such knowledge, PPG INDUSTRIES INC. garnisheed proceeds of the policy in Georgia, thereby choosing to assert that said proceeds of the policy were property of CAR COLOR INC., a claim that is completely inconsistent with its present claim. And this prior to trial of the action in Federal Court and before HENKIN and HENKIN performed their services said attorneys had a right to rely on such position. Certainly PPG INDUSTRIES INC. is now estopped as against said attorneys to claim otherwise.

POINT III

ANY RIGHTS UNDER SECURITY AGREEMENT
WERE AT BEST EQUITABLE AND SHOULD
YIELD TO CHARGING LIEN OF HENKIN
HENKIN

The position of PPG INDUSTRIES INC. can be best summarized by saying that it secured on September 28, 1970 a security agreement containing an agreement to insure that a fire policy was obtained on December 10, 1970 without any mention of it and that it has rights to proceeds of such policy by reason of fire loss.

Presumably such contention is based on the case of Weinreb vs M & S Bagels, Inc. 44 M (2) 537, 254 N.Y.S. (2) 158, but in that case the court clearly pointed out that the mortgagee had only equitable rights on the proceeds as between the owner and mortgagee.

A00029

The rights asserted by the attorneys here are legal rights by virtue of their charging lien. It was their labor that created the fund and it is only equitable that their lien be preferred to equitable rights. Abbondola vs Kawecki; supra, 177 M 122, 29 N.Y.S. (2) 530.

Furthermore this proceeding as pointed out heretofore is not to enforce the alleged equitable rights to proceeds of the policy but in aid of execution to reach proceeds of judgment obtained by CAR COLOR INC. against HARTFORD through the services of HENKIN and HENKIN and their charging lien should be given preference.

POINT IV

HARTFORD SHOULD BE AUTHORIZED TO
PAY HENKIN AND HENKIN \$2,609.25
PLUS COSTS OF \$45.00 AND TO PAY
THE BALANCE OF JUDGMENT AS THE COURT
MAY DEEM PROPER

Respectfully submitted,

HENKIN and HENKIN

A00030

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
RPG INDUSTRIES, INC.

Petitioner

-against-

THE HARTFORD FIRE INSURANCE COMPANY

Defendant
-----X

Index #
5190-1972
AFFIDAVIT IN
OPPOSITION

STATE OF NEW YORK

)SS.:

COUNTY OF WESTCHESTER

DAVID C. QUINN, an attorney-at-law duly admitted to practice in the Courts of the State of New York, states under the penalties of perjury as follows:

That he is a member of the firm of HENKIN and HENKIN and has actual knowledge of all of the facts hereinafter stated.

That this affidavit is submitted in opposition to a motion being made by the petitioner to pay over to it the proceeds of a judgment recovered in the United States District Court, Southern District of New York, in an action instituted by CAR COLOR INC. against HARTFORD FIRE INSURANCE COMPANY, with HENKIN and HENKIN as attorneys of record.

That on December 23, 1971 CAR COLOR INC. sustained a loss by fire. That thereafter prior to the expiration of one year after the occurrence of such fire, an action was instituted by CAR COLOR INC., as plaintiff, against HARTFORD FIRE INSURANCE COMPANY, as defendant, to recover such fire loss, in

AC00031

the Supreme Court, Westchester County.

That thereafter such action was removed by the defendant to the United States District Court, for the Southern District of New York.

That at the time of the institution of said action it was agreed between said CAR COLOR INC. and HENKIN and HENKIN, as the attorneys instituting said action, that said attorneys shall receive for their services 1/3rd of the amount to be recovered in and by said action. That it is respectfully submitted that immediately upon the institution of said action HENKIN and HENKIN, as attorneys for the plaintiff in said action, acquired a lien upon the proceeds in said action for services to be rendered by them therein.

That thereafter there were extensive examinations before trial in said action and thereafter a contested, two-day trial in the United States District Court, Southern District of New York, tried by deponent, before MR. JUSTICE MILTON POLLACK, who rendered a judgment after such trial in favor of said CAR COLOR INC. in the sum of \$7,354.29 with interest thereon from April 3, 1972, together with a bill of costs to be taxed by the Clerk, which the parties agreed to be in the sum of \$7,827.75 plus \$45.00 costs.

That the fair and reasonable value of the services rendered by HENKIN and HENKIN in this case is far in excess of such sum of \$2,609.25, due to the length of time that was devoted to the pleadings, examinations before trial, and trial of this case, all of which consumed many days of actual legal work.

That deponent submits that petitioner's motion papers demonstrate an abysmal ignorance of the law, and in particular Sections 474 and 475 of the Judiciary Law and numerous cases decided in various courts of this state. For example, in Matter of Peters (Bachman), 271 App. Div. 518 (1946),

A00032

the court stated (after citing Sections 474 and 475 of the Judiciary Law):

"Creditors of the client may only assert and enforce their claims against the portion of the judgment remaining after the amount of the attorney's lien has been paid or otherwise discharged."

And in Spinello v. Spinello, 70 Misc. 2nd 521 (1972), involving a proceeding under Rule 5227 of the CPLR, the court cited Section 475 of the Judiciary Law and stated:

"The attorneys charging lien is a right which vests so that a lawyer who recovers money for his client will not be left uncompensated for his efforts. Like the mechanic's lien, this principle recognizes the equitable notion that the agent responsible for the creation of an asset, or improvement of property, should have security for payment of his fees out of the very moneys which would not exist but for his services. It is regarded as an equitable assignment to the attorney of the funds produced by his efforts (citing Carmody-Wait 2nd) and, as to the fund resulting from the attorney's work, the attorney's lien enjoys a paramount priority over other claims. (Citing 4 cases including Matter of Peters (Bachman) above) A client's creditors, generally, may enforce their claims only against the net portion of the judgment remaining after the amount of the attorney's lien has been paid."

"Should the claim of a creditor, albeit for alimony, be allowed to defeat the attorney's lien, the protection securing payments of just fees would be defeated. Many clients with just claims, but without independent funds would, as a result, be unable to secure counsel."

That it cannot be contested that the fund in question resulted solely from the efforts of deponent and his law firm.

That what is especially galling to deponent is that the attorney for the petitioner assured deponent that he would not dispute our attorney's claim.

Furthermore, this proceeding is not based upon the assignment but is based upon a judgment recovered by the petitioner and is in aid of execution. Under the circumstances, the lien of the attorneys takes precedence over the claim of the

A00033

judgment creditor of CAR COLOR INC., and it would seem by entering a judgment the petitioner merged its rights under a claimed assignment which were equitable rights unto such judgment.

That deponent has been informed by CAR COLOR INC. that it consents to payment to its attorneys of \$2,609.25 plus \$45.00 in costs and to disposition of the balance as directed by the Court.

WHEREFORE, it is respectfully submitted that the HARTFORD FIRE INSURANCE COMPANY be directed to pay to HENKIN and HENKIN the sum of \$2,609.25 plus \$45.00 in costs and that the Court direct such further disposition of the balance of the judgment as the Court may deem proper.

Dated: July 5, 1973

DAVID C. QUINN

A00034

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
PPG INDUSTRIES, INC.,

Petitioner,

Index No. 5190/72

- against -

A F F I D A V I T

THE HARTFORD FIRE INSURANCE COMPANY,

Respondent.
-----x

STATE OF NEW YORK)

COUNTY OF NEW YORK)

ss:

JOHN M. SPEYER, being duly sworn, deposes and says:

1. I am one of the attorneys for the Hartford Fire Insurance Company, respondent herein. This affidavit is submitted in opposition to the petitioner's motion for an order directing payment to it from Hartford Fire Insurance Company (hereinafter Hartford).

2. The Hartford insured Car Color under policy No. 12 FS 364693 for fire loss to contents of premises located at 910 Nepperhan Avenue, Yonkers, New York.

3. On December 23, 1971 a fire occurred at these premises for which Car Color submitted claim.

4. Liability was denied by Hartford and suit was instituted and eventually tried in United States District Court for the Southern District of New York, Index 73 Civ. 157 before Hon. Milton Pollack on April 23 and 24, 1973. Car Color Inc. was awarded judgment in the sum of \$7354.29 with interest from April 3, 1972.

A00635

5. Payment of this judgment has not been made because various claims have been asserted against these funds and Hartford has been unable to determine which claims are entitled to these funds.

6. The claims are:

(a) Henkin and Henkin, 22 West First Street, Mount Vernon, New York, These were the attorneys who prosecuted the claim for Car Color and tried the action against Hartford. Their claimed attorneys' lien is in the amount of - \$2,654.25

(b) Internal Revenue Service has asserted a lien for employees' withholding taxes. A levy was served on October 12, 1972. Copy of final demand is attached as Exhibit A. Lien is asserted in the amount of - \$2,395.39

(c) New York State Unemployment Insurance Funds has asserted a claim, copy attached, Exhibit B, in the amount of - \$ 166.88

(d) PPG Industries, Inc., as indicated in the petition, has filed restraining notice and execution in the claimed amount of - \$12,300.90

7. Hartford is ready and willing to pay the amount of the judgment to whomever this court determines is entitled thereto.

WHEREFORE, respondent Hartford Fire Insurance Company, demands judgment in accordance with CPLR §5239:

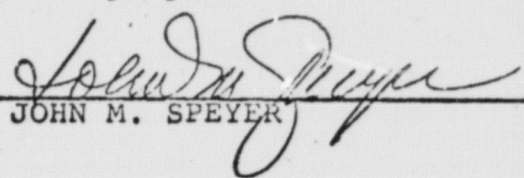
(a) That Hartford be authorized to pay the said monies into court, or to any or all of the claimants to the fund as directed;

(b) That upon payment as directed by this court Hartford be discharged from liability to Car Color Inc. and any and all claimants.

FINAL DEMAND
A00036

(c) That Hartford's costs and disbursements be paid out of the said funds.

(d) That Hartford have such other and further relief as may be just and proper.


JOHN M. SPEYER

Sworn to before me this

3rd day of July, 1973.

C. GLENN SC
Notary Public State of New York
No. 24-4506334
Qualified in Kings County
Commission Expires March 30, 1975

A00037
FINAL DEMAND

DISTRICT

Manhattan

DATE

April 30, 1973

O:

Mortimer Fire Ins. Company
235 Mamaronck Ave. White Plains N.Y.

On October 12, 1972, there was served upon you a levy, by leaving with Mr. Frank Yank at 235 Mamaronck Ave. a notice of levy, on all property, rights to property, moneys, credits and bank deposits then in your possession, to the credit of, belonging to, or owned by Car Color Inc. of 10 Kopperman Ave. Yonkers N.Y. who was at the time, and still is, indebted to the United States of America on unpaid internal revenue taxes, together with additions provided by law which had accrued thereon at the time of levy, and which amounted at that time to the sum of \$2395.39. Demand was made upon you for the amount set forth in the notice of levy, or for such lesser sum as you may have been indebted to the taxpayer, which demand has not been met.

Your attention is invited to the provisions of section 6332, Internal Revenue Code, as follows:

SEC. 6332. SURRENDER OF PROPERTY SUBJECT TO LEVY.

(a) Requirement.—Except as otherwise provided in subsection (b), any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(c) Enforcement of Levy.—

(1) Extent of Personal Liability.—Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy. Any amount (other than costs) recovered under this paragraph shall be credited against the tax liability for the collection of which such levy was made.

(2) Penalty for Violation.—In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

(d) Effect of Honoring Levy.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary or his delegate, surrenders such property or rights to property (or discharges such obligation) to the Secretary or his delegate (or who pays a liability under subsection (c)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment. In the case of a levy which is satisfied pursuant to subsection (b), such organization shall also be discharged from any obligation or liability to any beneficiary arising from such surrender or payment.

(e) Person Defined.—The term "person," as used in subsection (a), includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

* Demand is again made for the amount set forth in the notice of levy, \$ 2395.39, or for such lesser sum as you may have been indebted to the taxpayer at the time the notice of levy was served. If you comply with this final demand within five days from its service, no action will be taken to enforce the provisions of section 6332 of the Internal Revenue Code. If, however, this demand is not complied with within five days from the date of its service, it will be deemed to be finally refused by you and proceedings may be instituted by the United States as authorized by the statute quoted above.

SIGNATURE <i>Peter W. Ode</i>	TITLE Revenue Officer	ADDRESS (City and State) Yonkers, N.Y.
----------------------------------	--------------------------	---

CERTIFICATE OF SERVICE

I hereby certify that this Final Demand was served by handing a copy thereof to:

NAME Frank Yank	TITLE Manager	TIME (Mailed)
PLACE	DATE	DATE 4/30/73
REVENUE OFFICER (Signature) <i>Peter W. Ode</i>		

EXH "A"



UNEMPLOYMENT INSURANCE DIVISION

A00038
STATE OF NEW YORK
DEPARTMENT OF LABOR
STATE OFFICE BUILDING CAMPUS
ALBANY, NEW YORK 12201

May 11, 1973

David C. Quinn, Esq.
22 West 1st Street
Mt. Vernon, NY 10550

In reply refer to:
CENTRAL ASSIGNMENT
& CONTROL SECTION
E.R.#43-26997

RE: CAR COLOR, INC.

Dear Sir:

This is in reply to your telephone request of May 3, 1973.

A review of our records reveals that your client's account is indebted to the New York State Unemployment Insurance Fund as follows:

PERIOD	CONTRIBUTIONS	INTEREST	REQUEST REPORT PENALTY	
1970-Yr.		\$5.80		
1971-3Q	\$76.50			
-4Q	44.28			
1971-Yr.		4.65		
1972-1Q			\$20.00	= \$151.23

Interest on above unpaid contributions computed to May 11, 1973 = 15.65
Total due as of May 11, 1973 = \$166.88

Each day after May 11, 1973, interest continues to accrue at the rate of \$.03 per day.

Upon receipt of certified payment in this amount, your client's account will be in balance, and we will forward Satisfaction of Judgment to you, which, when filed with the County Clerk, will satisfy the judgments of record.

Certified check or money order should be made payable to the New York State Unemployment Insurance Fund and mailed to the attention of the undersigned, Unemployment Insurance Division, Building #12, State Office Building Campus, Albany, New York 12226.

Very truly yours,

Henry J. Gorko
Henry J. Gorko

LH 5 (2-73)

HJG:ab

EXH B

72-2221
A00039

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PPG INDUSTRIES, INC.,

Petitioner,

-against-

THE HARTFORD FIRE INSURANCE COMPANY

Respondent.

Not
ASSIGNED TO
I.C. PART

Index #
5190/22

S I R S :

PLEASE TAKE NOTICE that on the attached petition of JACOB F. GOTTESMAN sworn to June ^{16th}, 1973, the security agreement between PPG INDUSTRIES, INC. and CAR COLOR, INC., dated September 28th, 1970, the UCC (1) financing statements filed in the County Clerk's office in Westchester and with the Secretary of State on October 7th, 1970 and October 8th, 1970, respectively, the notice of restraint and sheriff's execution a motion will be made by the undersigned in ^{Special Term} ~~Part I~~ Part I of the Supreme Court of the State of New York, County of New York at the Courthouse thereof, Centre and Pearl Street, Manhattan on the ^{11th} day of July, 1973 at 9:30 A.M. or as soon thereafter its counsel can be heard why an order should not be made and entered herein pursuant to Rule 5227 of the CPLR directing the HARTFORD FIRE INSURANCE COMPANY to pay the judgment proceeds CAR COLOR, INC. recovered against the HARTFORD FIRE INSURANCE COMPANY on April 26th, 1973 in the United States District Court, Southern District of New York to the sheriff of the City of New York to be applied to the partial payment of PPG's judgment in

A00040

the sum of \$12,300.00 and for such other and further relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that answering affidavits must be served on the undersigned five (5) days before the return day of this motion.

Dated: New York City, June 26th, 1973

Yours, etc.

JACOB F. GOTTESMAN
Attorney for the Petitioner
Office & P. O. Address
295 Madison Avenue
New York, New York 10017
Telephone # MU 3 - 2626

TO: HENKIN and HENKIN, Esqs.
Attorneys for CAR COLOR, INC.
22 West First Street
Mount Vernon, New York 10550

INTERNAL REVENUE SERVICE
53 South Broadway
Yonkers, New York 10701

STATE OF NEW YORK
Unemployment Insurance Division
Building #12
State Office Building Campus
Albany, New York 12246
ATTENTION: Mr. Henry J. Gorko

GREENHILL & SPEYER, ESQS.
Attorneys for The Hartford Fire Insurance Company
56 Pine Street
New York, New York 10005

A00041

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PPG INDUSTRIES, INC.,

Petitioner,

-against-

THE HARTFORD FIRE INSURANCE COMPANY,

Respondent.

TO THE HONORABLE SUPREME COURT :

The petition of JACOB F. GOTTESMAN respectfully shows and alleges:

1. That he is the attorney for PPG INDUSTRIES, INC. (hereafter PPG) and recovered a judgment in favor of PPG against CAR COLOR, INC. on April 14th, 1972, index number 5190/72. PPG has directed the petitioner to institute this proceeding to obtain a directory order from this Court according to it the entire recovery obtained by CAR COLOR against the THE HARTFORD FIRE INSURANCE COMPANY (hereafter HARTFORD).

2. That on behalf of PPG, I brought suit against CAR COLOR, INC. in the Supreme Court of the City of New York and entered judgment against said CAR COLOR, INC. on April 14th, 1972 for \$12,300.00, no part of said sum has been paid.

3. On September 28th, 1970, CAR COLOR, INC. executed and delivered to PPG a security agreement on its inventory and equipment. Pursuant to paragraph (5) of said agreement, CAR COLOR, INC. agreed in clause (f) to keep the Inventory and Equipment insured for the benefit of the Secured Party (to whom ~~the~~ loss

shall be payable) and in such amount and with such companies and against such risks as may be satisfactory to Secured Party, *** and Borrower assigns to Secured Party all right to receive proceeds of such insurance, directs any insurer to pay all proceeds directly to Secured Party and authorizes Secured Party to endorse any draft for such proceeds."

A. 4. A financing statement was filed by petitioner in the office of the clerk at Westchester County on October 7th, 1970 and in the office of the Secretary of State at Albany on October 8th, 1970, accompanied with copies of the security agreement. CAR COLOR, INC., in about the year 1972 sustained a fire loss.

D-2 5. In the month of April, 1972, PPG caused the fire insurance policy and proceeds to be attached in the State of Georgia. In the course of a trial of the action on the part of CAR COLOR, INC. against the insurance carrier, the Hartford Fire Insurance Company, in the United States District Court for the Southern District of New York wherein said CAR COLOR, INC. recovered a judgment on its fire loss in the amount of \$7,354.29. A [The insurance company then informed the presiding judge of the existing attachment in favor of this judgment creditor.] Judgment was rendered in favor of CAR COLOR, INC. in said United States Court action on April 26th, 1973 against the HARTFORD FIRE INSURANCE COMPANY.

A 6. On May 29th, 1973, PPG served a notice of restraint on the HARTFORD FIRE INSURANCE COMPANY, a copy thereof is attached prohibiting the transfer of the proceeds of the recovery.

A00043

DET
7. On June 22nd, 1973, petitioner gave the Sheriff of the City of New York an execution with notice to garnishee the proceeds of said recovery in the possession of the HARTFORD FIRE INSURANCE COMPANY.

8. This motion is made under Rule 5227 of the CPLR to compel the HARTFORD FIRE INSURANCE COMPANY to pay the total proceeds of the judgments OAR COLOR, INC. recovered to the Sheriff to be applied to the partial satisfaction of petitioner's judgment.

NA and
9. It is the contention of the petitioner, PPG, that it has superior right to recover the full sum as against (a) the attorneys who represented the judgment debtor who are claiming payment for their services \$2,653.25 and lien on the recovery, (b) as against the Internal Revenue Service which filed a demand on the HARTFORD FIRE INSURANCE COMPANY on October 12th, 1972 when the fund was not in existence, and which made a further demand on April 30th, 1973 for the sum of \$2,395.39 and (c) against the State of New York which made a demand for \$166.88 on May 11th, 1973.

D
10. PPG's superior right is derived from the security agreement which assigned the proceeds of said policy - any fire policy - on the date of signing, September 28th, 1970. An assignment acts from the date it is executed. In this case it is clearly so intended by the language contained therein. Filing of the document as required by the Uniform Commercial Code enhanced PPG's right to these funds as it was notice to one and all of PPG's derivative interest in the inventory and equipment or its value in the event of a fire loss recovery. All three parties are

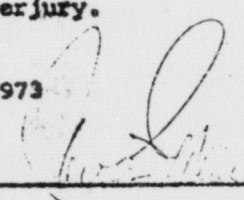
A00044

presumed to be on notice of PPG's interest in the secured property or the insurance proceeds. In addition to PPG's rights emanating from the security agreement and its filing PPG's attachment of the proceeds in Georgia in April, 1972 cements in its interest in the fund. Entry of a judgment in the attachment proceeding retroactively affixes PPG's right to the res or funds as of April, 1972. Hence the sum of these rights gives PPG a superior interest in the proceeds to the attorneys, whose claims must bow to the substance of the agreement the client had consummated on September 28th, 1970. By assigning the proceeds on that day, the client put it beyond the prospects of a charging lien on the fund. It is unfortunate that the attorneys were not aware of the existence of the assignment. As to the Internal Revenue Service and the State of New York, they must of course submit to PPG's assignment and filing, the touchstone of PPG's rights to the proceeds. Hence there were no free funds extant when the two agencies made their demands on the fire insurance proceeds.

We therefore pray for the relief provided in Rule 5227 of the CPLR directing the HARTFORD FIRE INSURANCE COMPANY to pay the judgment proceeds to the Sheriff of the City of New York.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: New York City, June 26th, 1973



JACOB F. GOTTESMAN
Attorney for the Petitioner
Office & P.O. Address
295 Madison Avenue
New York, New York 10017
Telephone # MU 3 - 2626

A00045

SECURITY AGREEMENT

THIS AGREEMENT made this 20th day of September, 1977 between PPG INDUSTRIES, Inc., a Pennsylvania corporation with its principal office at One Gateway Center, Pittsburgh 22, Pennsylvania, (hereinafter referred to as "SECURED PARTY") and

Car Color, Inc.

- ☐ an individual or individuals
☒ a corporation (CHECK ONE)
☐ a partnership

of 910 Nopperhan Ave. Yonkers Westchester New York
STREET CITY COUNTY STATE

(hereinafter referred to as "BORROWER").

The parties hereto, intending to be legally bound, agree as follows:

1. Meaning of Terms Used Herein:

- (a) "Inventory" means paints or any other products manufactured or distributed by PPG INDUSTRIES, Inc. now owned or hereafter acquired and held for sale or furnished or to be furnished under contracts of service or used or consumed in Borrower's business;
- (b) "Equipment" means those goods, merchandise and other personal property used in Borrower's business as follows:

(DESCRIBE INCLUDING SERIAL NUMBER)

- (c) "Borrower" includes all persons or corporations executing this Agreement as parties hereto and all members of a partnership when Borrower is a partnership, each of whom shall be jointly and severally liable individually and as partners hereunder;
- (d) "Security Interest" means an interest in property which secures payment or performance of an obligation;
- (e) "Collateral" means the Inventory and Equipment described herein in which Secured Party is granted a Security Interest;
- (f) "Liability" or "Liabilities" includes all liabilities (primary, secondary, direct, contingent, sole, joint or several) due or to become due or that may be hereafter contracted or incurred, of Borrower to Secured Party.

2. Borrower hereby grants to Secured Party to secure all of Borrower's Liabilities a security interest under the Uniform Commercial Code in the Inventory owned by Borrower at the date of this agreement; the Inventory at any time hereafter acquired by Borrower; all proceeds of such Inventory; and the Equipment which is used in Borrower's business, to secure the payment of all liability or liabilities of Borrower to Secured Party, all cost and expenses incurred by Secured Party in the collection of same, all future advances by Secured Party for taxes, levies, insurance and repairs to or maintenance of the collateral and all other past, present, future, direct or contingent liabilities of Borrower to Secured Party.

3. So long as any liability to Secured Party is outstanding, Borrower will not, without the prior written consent of Secured Party, borrow from anyone or pledge or grant any security interest in any account or contract right or any of the Inventory or Equipment to anyone except Secured Party or permit any lien or encumbrance to attach to any of the foregoing or any levy to be made thereon, or any financing statement, except Secured Party's statement, to be on file with respect thereto.

4. Borrower represents that the location where it keeps the Inventory and Equipment is at the address specified above unless a different address is specified in the following space:

and that all of Borrower's places of business are in the county set forth above. Borrower will immediately advise Secured Party in writing of the opening of any new place of business or the closing of any existing place of business and of any change in the location of the places where the Inventory and Equipment is kept.

5. Borrower will (a) maintain Inventory in such quantities that the value of said Inventory and Equipment at cost shall be at least equal to its liabilities to Secured Party; (b) sell the Inventory only in the ordinary course of business; (c) furnish Secured Party at such intervals as Secured Party may prescribe with a Borrower's certificate (in such form as Secured Party may from time to time specify) showing the aggregate cost value of the Inventory; (d) keep accurate and complete records of the Inventory and Equipment; (e) pay and discharge when due all taxes, levies and other charges on the Inventory and Equipment; (f) keep the Inventory and Equipment insured for the benefit of Secured Party (to whom loss shall be payable) and in such amount and with such companies and against such risks as may be satisfactory to Secured Party; pay the cost of all such insurance; and deliver certificates evidencing such insurance to Secured Party; and Borrower assigns to Secured Party all right to receive proceeds of such insurance, directs any insurer to pay all proceeds directly to Secured Party, and authorizes Secured Party to endorse any draft for such proceeds; (g) join with Secured Party in executing a financing statement, notice of affidavit or similar instrument in form satisfactory to Secured Party and such other instruments as Secured Party may from time to time request and consents to the filing of same at any public office deemed advisable by Secured Party; and (h) give Secured Party such financial statements, reports, certificates, lists of Inventory and other data concerning its accounts, contracts, collections, Inventory, Equipment and other matters as Secured Party may from time to time specify, and permit Secured Party or its nominee to examine all of Borrower's records relating thereto at any time and to make extracts therefrom and to inspect and check Borrower's Inventory and Equipment.

6. Borrower warrants that it is and will be the absolute owner of its Inventory and Equipment clear of all encumbrances and security interests other than the Secured Party's security interest.

7. Borrower shall pay Secured Party such amounts as may be agreed upon in accordance with promissory note of even date herewith and shall repay to Secured Party all costs, including attorneys' fees, incurred by it in the preservation of collateral.

8. Secured Party shall have the right at any time and from time to time, without notice, to: (a) insure Inventory and Equipment to its satisfaction at Borrowers' expense if Borrower fails to do so; (b) pay, for the account of Borrower, any taxes, levies, or other charges affecting Borrower's Inventory and Equipment which Borrower fails to pay; and any such payment shall constitute a liability of Borrower.

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accounts which are proceeds of the Inventory promptly after they arise; (b) deliver to Secured Party promptly upon receipt, the proceeds of its Inventory received by Borrower (except goods), including proceeds of the accounts referred to above, in the exact form in which they are received; (c) to evidence Secured Party's rights hereunder, assign or endorse proceeds to Secured Party; (d) notify account debtors that the accounts are payable to Secured Party, Secured Party shall have full power to notify account debtors, collect, compromise, enforce, sell or otherwise deal with proceeds in its own name at any time. Secured Party in its discretion may apply cash proceeds to the payment of any liabilities or may release such cash proceeds to Borrower for use in the operation of Borrower's business.

10. Borrower will (a) keep the Equipment in good condition and repair, reasonable wear and tear excepted; (b) permit Secured Party to inspect the Equipment at any time; (c) not permit any of the Equipment to be sold or removed from the above location without the prior written consent of the Secured Party; (d) not permit any of the Equipment to be leveraged upon under any legal process nor dispose of any of the Equipment without the prior written consent of Secured Party; and (e) not permit the Equipment to be a fixture or to become an accession to other goods.

11. Until default, Borrower may use the Inventory and Equipment in any lawful manner not inconsistent with this agreement, and may sell the Inventory in the ordinary course of business.

12. If at any time any warranty, representation, certificate or statement of Borrower is not true or if any event of default as defined in any note or other evidence of liability held by Secured Party should occur or if Borrower should fail to observe or perform any term hereof, all liabilities of Borrower to Secured Party shall immediately become due and payable, and Secured Party may in addition to any other rights and remedies which it may have, immediately and without demand, exercise any and all of the rights and remedies granted to a secured party upon default under the Uniform Commercial Code.

13. Secured Party may require Borrower to assemble its Inventory and Equipment and make it available to Secured Party at a place to be designated by Secured Party which is reasonably convenient to Secured Party and Borrower. Borrower shall pay to Secured Party on demand any and all expenses, including legal expenses and reasonable attorneys' fees incurred or paid by Secured Party in protecting and enforcing liabilities and the rights of Secured Party hereunder, including Secured Party's right to take possession of Borrower's Inventory and its proceeds and Equipment and to hold, prepare for sale, sell and dispose of such Inventory and Equipment. Any notice of sale, disposition or other intended action by Secured Party, sent to Borrower at the address specified herein, or such other address of Borrower as may from time to time be shown on Secured Party's records, at least five days prior to such action, shall constitute reasonable notice to Borrower.

14. Exercise or omission to exercise any right of Secured Party shall not affect any subsequent right of Secured Party to exercise the same. The provisions of this agreement shall be in addition to those of any such note or other evidence of any liability, all of which shall be construed as one instrument.

15. This Agreement and the security interest in the Inventory and Equipment created hereby shall terminate when the Liabilities have been paid in full. Prior to such termination, this shall be a continuing Agreement. If any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

PPG INDUSTRIES, Inc.

(Secured Party)

By R. H. Reckley
R. H. Reckley District Controller
Manager

(USE APPROPRIATE SIGNATURE LINES)

(Borrower)

Witness:

X X Ray Kelley
Raymond Kelley

..... (SEAL)

(INDIVIDUAL)

..... (SEAL)

(INDIVIDUAL)

Witness or Attest:

(CORPORATE SEAL)

Car Color, Inc.
(CORPORATION OR PARTNERSHIP)

X X By [Signature]
(NAME AND TITLE)

(IF PARTNERSHIP, ALL PARTNERS MUST SIGN)

LANDLORD'S WAIVER

WHEREAS,, the Borrower, has executed and delivered a Security Agreement to PPG INDUSTRIES, Inc., Secured Party, covering certain inventory and equipment to be located at

NOW, THEREFORE, the undersigned Landlord of the said premises, intending to be legally bound hereby, does waive, relinquish, and release unto the Secured Party, its successors and assigns, all right of levy or distraint for rent and all claims, liens and demands of every kind which said Landlord has or may hereafter have against said inventory and equipment, this waiver to continue until termination of the Security Agreement.

IN WITNESS WHEREOF, the undersigned has executed this waiver under seal this day of, 19....

Witness or Attest:

(LANDLORD)

A00047

This FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code.		No. of Additional Sheets Presented: 2	Maturity Date 3. (optional):
1. Debtor(s) (Last Name First) and Address(es): Car Color, Inc. 910 Nepperhan Ave. Yonkers, New York	2. Secured Party(ies): Name(s) and Address(es): PPG Industries, Inc. One Gateway Center Pittsburgh, Pa.	4. For Filing Officer: Date, Time, No. Filing Office OCT 8 1970 3:00 PM 181,319	
5. This Financing Statement covers the following types (or items) of property: See attached Security Agreement		6. Assignee(s) of Secured Party and Address(es):	
<input checked="" type="checkbox"/> Proceeds are also covered. <input type="checkbox"/> Products of the Collateral are also covered.		7. <input type="checkbox"/> The described crops are growing or to be grown on. <input type="checkbox"/> The described goods are or are to be affixed to. (Describe Real Estate Below):	
8. Describe Real Estate Here:		9. Name(s) of Record Owner(s):	
No. & Street	Town or City	County	Section Block Lot

This FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code.		No. of Additional Sheets Presented: 1	Maturity Date 3. (optional):
1. Debtor(s) (Last Name First) and Address(es): Car Color, Inc. 910 Nepperhan Ave. Yonkers, New York	2. Secured Party(ies): Name(s) and Address(es): PPG Industries, Inc. One Gateway Center Pittsburgh, Pa.	4. For Filing Officer: Date, Time, No. Filing Office 70-15-11 11:00 AM 181,319	
5. This Financing Statement covers the following types (or items) of property: See attached Security Agreement		6. Assignee(s) of Secured Party and Address(es):	
<input checked="" type="checkbox"/> Proceeds are also covered. <input type="checkbox"/> Products of the Collateral are also covered.		7. <input type="checkbox"/> The described crops are growing or to be grown on. <input type="checkbox"/> The described goods are or are to be affixed to. (Describe Real Estate Below):	
8. Describe Real Estate Here:		9. Name(s) of Record Owner(s):	
No. & Street	Town or City	County	Section Block Lot

10. This statement is filed without the debtor's signature to perfect a security interest in collateral (check appropriate box)
- ☒ under a security agreement signed by debtor authorizing secured party to file this statement.
- ☐ already subject to a security interest in another jurisdiction when it was brought into this state.
- ☐ which is proceeds of the original collateral described above in which a security interest was perfected:

REC'D OCT 14 1970

By _____ (Signature(s) of Debtor(s)) By _____ (Signature(s) of Secured Party(ies))

(2) Filing Office Copy — Acknowledgment

(9/65) NY STANDARD FORM - FORM UCC-1 — Approved by John P. Lomenzo, Secretary of State of New York

Index No. 5190/1972

PPG INDUSTRIES, INC.

Plaintiff

against

CAR COLOR, INC.

Defendant

RESTRAINING NOTICE
TO GARNISHEE

Re: Car Color, Inc.
Judgment Debtor

The People of the State of New York

TO Hartford Fire Insurance Company, 123 William Street, Garnishee; GREETING:
New York, New York

WHEREAS, in an action in the Supreme court of the State of New York
county of New York between PPG Industries, Inc.,

Car Color, Inc., of 910 Nepperham Avenue, Yonkers, New York as plaintiff and

as defendant
who are all the parties named in said action, a judgment was entered on April 14, 19 72
in favor of PPG Industries, Inc.,

judgment creditor and against

Car Color, Inc.,

judgment debtor

in the amount of \$ 12,300.90 of which \$ 12,300.90 together with interest thereon
from April 14, 19 72 remains due and unpaid; and

WHEREAS, it appears that you owe a debt to the judgment debtor or are in possession or in custody of
property in which the judgment debtor has an interest;

Proceeds of Policy #12 FS 364693 in the amount of \$7,354, pursuant
to a judgment rendered in favor of defendant against the Hartford Fire
Insurance Company.

TAKE NOTICE that pursuant to subdivision (b) of Section 5222 of the Civil Practice Law and Rules,
which is set forth in full herein, you are hereby forbidden to make or suffer any sale, assignment or transfer of,
or any interference with, any such property or pay over or otherwise dispose of any such debt except as therein
provided.

TAKE FURTHER NOTICE that this notice also covers all property in which the judgment debtor has
an interest hereafter coming into your possession or custody, and all debts hereafter coming due from you to
the judgment debtor.

CIVIL PRACTICE LAW AND RULES

Section 5222(b) Effect of restraint; prohibition of transfer; duration. A judgment debtor served with a restraining notice is forbidden
to make or suffer any sale, assignment, transfer or interference with any property in which he has an interest, except upon direction of the
sheriff or pursuant to an order of the court, until the judgment is satisfied or vacated. A restraining notice served upon a person other
than the judgment debtor is effective only if, at the time of service, he owes a debt to the judgment debtor or he is in the possession or
custody of property in which he knows or has reason to believe the judgment debtor has an interest, or if the judgment creditor has stated
in the notice that a specified debt is owed by the person served to the judgment debtor or that the judgment debtor has an interest in
specified property in the possession or custody of the person served. All property in which the judgment debtor is known or believed
to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all
debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor, shall be subject to
the notice. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay
over or otherwise dispose of any such debt, to any person other than the sheriff, except upon direction of the sheriff or pursuant to an order
of the court, until the expiration of one year after the notice is served upon him, or until the judgment is satisfied or vacated, whichever event
first occurs. A judgment creditor who has specified personal property or debt in a restraining notice shall be liable to the owner of the property
or the person to whom the debt is owed, if other than the judgment debtor, for any damages sustained by reason of the restraint. If a
garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor in an amount equal to
twice the amount due on the judgment, the restraining notice is not effective as to other property or money.

TAKE FURTHER NOTICE that disobedience of this Restraining Notice is punishable as a contempt
of court.

Dated: New York, May 29, 1973


The name signed must be printed beneath
JACOB F. GOTTESMAN

Attorney(s) for Judgment Creditor
Office and Post Office Address
295 Madison Avenue
New York, New York 10017
Telephone No. MU 3-2626

A00049

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No. 5190/72

PPG INDUSTRIES, INC.

Plaintiff

against

CAR COLOR, INC.

Defendant

EXECUTION
WITH NOTICE TO
GARNISHEE

The People of the State of New York

TO THE SHERIFF OF ANY COUNTY, GREETING:

WHEREAS, in an action in the SUPREME court of THE STATE OF NEW YORK
county of NEW YORK between PPG INDUSTRIES, INC.

as plaintiff and
as defendant 1972

CAR COLOR, INC.
who are all the parties named in said action, a judgment was entered on April 14th
in favor of PPG INDUSTRIES, INC.
and against CAR COLOR, INC.

judgment creditor
judgment debtor

whose last known address is 910 Kopperham Avenue, Yonkers, New York
in the amount of \$ 12,300.00 including costs, of which \$12,300.00
with interest thereon from April 14th, 1972 remains due and unpaid; and

together

WHEREAS, a transcript of the judgment was filed on 19 with
the Clerk of the County of in which county the judgment was entered; and

WHEREAS, a transcript of the judgment was docketed in the office of the Clerk of your county on 19

NOW, THEREFORE, WE COMMAND YOU to satisfy the said judgment out of the real and personal
property of the above named judgment debtor and the debts due to him; and that only the property in which
said judgment debtor who is not deceased has an interest or the debts owed to him shall be levied upon or sold
hereunder; AND TO RETURN this execution to the clerk of the above captioned court within sixty days after
issuance unless service of this execution is made within that time or within extensions of that time made in
writing by the attorney(s) for the judgment creditor

Notice to Garnishee

TO: HARTFORD FIRE INSURANCE CO.
ADDRESS: 123 William Street, New York, New York

WHEREAS, it appears that you are indebted to the judgment debtor, above named, or in possession or
custody of property not capable of delivery in which the judgment debtor has an interest, including, without
limitation, the following specified debt and property:

Proceeds of Policy #12 PS 364093 in the amount of \$7,354, pursuant
to a judgment rendered in favor of defendant against the Hartford Fire
Insurance Company.

NOW, THEREFORE, YOU ARE REQUIRED by section 5232(a) of the Civil Practice Law and Rules
forthwith to transfer to the sheriff all personal property not capable of delivery in which the judgment debtor
is known or believed to have an interest now in or hereafter coming into your possession or custody including
any property specified in this notice; and to pay to the sheriff, upon maturity, all debts now due or hereafter
coming due from you to the judgment debtor, including any debts specified in this notice; and to execute any
documents necessary to effect such transfer or payment;

AND TAKE NOTICE that until such transfer or payment is made or until the expiration of ninety days
after the service of this execution upon you or such further time as is provided by any order of the court served
upon you whichever event first occurs, you are forbidden to make or suffer any sale, assignment or transfer of,
or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person
other than the sheriff, except upon direction of the sheriff or pursuant to an order of the court;

AND TAKE FURTHER NOTICE THAT at the expiration of ninety days after a levy is made by service
of this execution, or of such further time as the court upon motion of the judgment creditor has provided, this
levy shall be void except as to property or debts which have been transferred or paid to the sheriff or as to
which a proceeding under sections 5225 or 5227 of the Civil Practice Law and Rules has been brought.

WITNESS, Hon. SIDNEY A. FINE
this 22nd day of June 1973

Justice of the SUPREME Court,

The name signed must be printed beneath.

JACOB F. GOTTSMAN
Attorney(s) for Judgment Creditor
Office and Post Office Address
295 Madison Avenue
New York, New York 10017
Tel. W NU 3 - 2626

A00050

FORM 668-C
(REV. MAY 1967)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

FINAL DEMAND

DISTRICT

Manhattan

DATE

April 30, 1973

TO:

Hartford Fire Ins. Company
235 Mamaroneck Ave. White Plains N.Y.

On October 12,

1972

Mr. Frank Yank

at 235 Mamaroneck Ave.

a notice of levy, on all property, rights to property, moneys, credits and bank deposits then in your possession, to the

credit of, belonging to, or owned by Car Color Inc. of

910 Nepperhan Ave. Yonkers N.Y., who was at the time, and still is, indebted to the United States of America for unpaid internal revenue taxes, together with additions provided by law which had accrued thereon at the time of levy,

and which amounted at that time to the sum of \$ ~~2795.39~~ 2795.39. Demand was made upon you for the amount set forth in the notice of levy, or for such lesser sum as you may have been indebted to the taxpayer, which demand has not been met.

Your attention is invited to the provisions of section 6332, Internal Revenue Code, as follows:

SEC. 6332. SURRENDER OF PROPERTY SUBJECT TO LEVY.

(a) Requirement.—Except as otherwise provided in subsection (b), any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(c) Enforcement of Levy.—

(1) Extent of Personal Liability.—Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy. Any amount (other than costs) recovered under this paragraph shall be credited against the tax liability for the collection of which such levy was made.

(2) Penalty for Violation.—In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

(d) Effect of Honoring Levy.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary or his delegate, surrenders such property or rights to property (or discharges such obligation) to the Secretary or his delegate (or who pays a liability under subsection (c)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment. In the case of a levy which is satisfied pursuant to subsection (b), such organization shall also be discharged from any obligation or liability to any beneficiary arising from such surrender or payment.

(e) Person Defined.—The term "person," as used in subsection (a), includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

Demand is again made for the amount set forth in the notice of levy, \$ ~~2795.39~~ 2795.39, or for such lesser sum as you may have been indebted to the taxpayer at the time the notice of levy was served. If you comply with this final demand within five days from its service, no action will be taken to enforce the provisions of section 6332 of the Internal Revenue Code. If, however, this demand is not complied with within five days from the date of its service, it will be deemed to be finally refused by you and proceedings may be instituted by the United States as authorized by the statute quoted above.

SIGNATURE

TITLE

ADDRESS (City and State)

Patrick W. Delle

Revenue Officer

Yonkers, N.Y.

CERTIFICATE OF SERVICE

I hereby certify that this Final Demand was served by handing a copy thereof to:

NAME

Frank Yank

TITLE

Manager

PLACE

DATE

TIME

REVENUE OFFICER (Signature)

DATE

Patrick W. Delle

4/30/73

A00051

FORM 668-A

(REV. FEB. 1967)

DATE

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

NOTICE OF LEVY

TO

Hartford Fire Insurance Co.
235 Mamaroneck Ave.
White Plains, N.Y. 10605
Att: Mr. Charles Hamilton



ORIGINATING DISTRICT

Manhattan

You are hereby notified that there is now due, owing and unpaid to the United States of America from the taxpayer whose name appears below the sum of \$ 2,331.65

TAX FORM NO.	PERIOD ENDED	DATE OF ASSESSMENT	IDENTIFYING NO.	UNPAID BALANCE OF ASSESSMENT	STATUTORY ADDITIONS	TOTAL
941	09-30-71	12-10-71	13-2666205	\$ 1252.25	\$ 177.02	\$ 1429.27
941	12-31-71	03-27-72	"	825.85	64.53	890.38
					Lien Fees	12.00
TOTAL AMOUNT DUE						2331.65

You are further notified that demand has been made for the amount set forth herein upon the taxpayer who has neglected or refused to pay, and that such amount is still due, owing, and unpaid from this taxpayer. Accordingly, you are further notified that all property, rights to property, moneys, credits, and bank deposits now in your possession and belonging to this taxpayer (or with respect to which you are obligated) and all sums of money or other obligations owing from you to this taxpayer, or on which there is a lien provided under Chapter 64, Internal Revenue Code of 1954, are hereby levied upon and seized for satisfaction of the aforesaid tax, together with all additions provided by law, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth herein, or for such lesser sum as you may be indebted to him, to be applied as a payment on his tax liability. Checks or money orders should be made payable to "Internal Revenue Service".

SIGNATURE

H.H. Flint

TITLE

Rev. Officer

ADDRESS (CITY AND STATE)

45 S. Broadway, Yonkers, N.Y. 10701

CERTIFICATE OF SERVICE

I hereby certify that this levy was served by delivering a copy of this notice of levy to the person named below.

NAME

Mr. Frank York

TITLE

Mgt.

DATE AND TIME

10-12-72 3:15 PM

SIGNATURE OF REVENUE OFFICER

H.H. Flint

(Name and Address of Taxpayer)

Car Color Inc.
910 Nepperhan Ave.
Yonkers, N.Y. 10703

Taxpayer's Policy # 12FS 364693

PART 1 -- TO BE RETURNED TO INTERNAL REVENUE SERVICE

FORM 668-A (REV. 2-67)

A00052

DEFENDANT-APPELLANT'S ANSWER AND CROSS CLAIM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED 9-12-73
S.D. OF NEW YORK

PPG INDUSTRIES, INC.,

Plaintiff,

-v-

THE HARTFORD FIRE INSURANCE COMPANY : 73 Civ. 3550 M.E.F.
and UNITED STATES OF AMERICA, :

Defendants.

ANSWER & CROSS-CLAIM

The defendant, United States of America, by its attorney, Paul J. Curran, United States Attorney for the Southern District of New York, and for its answer to the plaintiff's position dated June 26, 1973:

1. Admits each allegation contained in paragraphs "1" and "2".

2. Denies each allegation contained in paragraph "3" but admits that Car Color, Inc., executed a security agreement with plaintiff dated September 28, 1970, and refers to such agreement for its terms and legal effect.

3. As connected to read that Car Color, Inc., sustained a fire loss on December 23, 1971, admits each allegation contained in paragraph "4".

4. Lacks knowledge or information sufficient to form a belief as to the allegations contained in paragraph "5" of the complaint, but admits that Car Color, Inc., was awarded judgment against defendant, The Hartford Fire Insurance Company, on April 25, 1973, in this Court in the amount of \$7,354.25 with interest from April 3, 1972.

A00053

5. Admits each allegation contained in paragraphs "6", "7", "8" and "9".

6. Denies each allegation contained in paragraph "10".

AND FOR A CROSS-CLAIM against the defendant, The Hartford Fire Insurance Company, the defendant United States of America alleges:

**STATEMENT OF VENUE
AND JURISDICTION**

7. This is an action to determine the rights to the proceeds of a \$7,354.29 judgment entered April 26, 1973, in this Court in favor of Car Color, Inc., and against defendant, The Hartford Fire Insurance Company. This Court's jurisdiction is under 26 U.S.C. §7402 and 28 U.S.C. §§1340, 1346(a)(2).

IDENTIFICATION OF THE PARTIES

8. The defendant United States of America brings this cross-claim pursuant to 26 U.S.C. §§7401, 7403, as directed by the Attorney General of the United States with the authorization and at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury of the United States.

9. The defendant United States of America is a tax creditor of Car Color, Inc.

10. Plaintiff, FPG Industries, Inc., is a judgment creditor of Car Color, Inc., pursuant to a \$12,300.00 judgment entered April 14, 1972.

A00054

11. The defendant, The Hartford Fire Insurance Company, is a judgment debtor of Car Color, Inc., in the amount of \$7,354.29 pursuant to a judgment entered April 26, 1973, in this Court.

FOR A CAUSE OF ACTION

12. On October 12, 1972, defendant United States of America filed a Notice of Levy against defendant, The Hartford Fire Insurance Company, in the amount of \$2,331.65 to recover taxes owed by Car Color, Inc.

13. On April 30, 1973, a Final Demand was served on defendant, The Hartford Fire Insurance Company, by defendant United States of America, in the amount of \$2,395.39 with respect to the same taxes described in paragraph "12" herein.

14. The defendant, The Hartford Fire Insurance Company, has failed to comply with either the Notice of Levy or the Final Demand.

15. The taxes owed defendant United States of America by Car Color, Inc., remain unpaid.

WHEREFORE, defendant United States of America demands judgment dismissing the plaintiff's complaint, ordering the defendant The Hartford Fire Insurance Company to turn over \$2,331.65 plus interest from October 12, 1972, to defendant United States of America, and granting such other and further relief, including but not limited to the

A00055

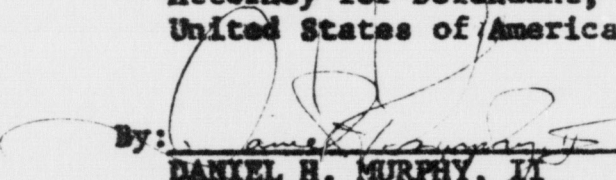
costs and disbursements of this action, as may be just.

Dated: New York, New York

September 14, 1973.

Yours, etc.,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York,
Attorney for Defendant,
United States of America

By: 
DANIEL H. MURPHY, II
Assistant United States Attorney
Office and Post Office Address:
United States Court House
Foley Square
New York, New York 10007
Tel.: (212) 264-6322

TO: Jacob P. Gottesman, Esq.
Attorney for PPG Industries, Inc.
295 Madison Avenue
New York, New York 10017

Henkin & Henkin, Esqs.
Attorneys for Car Color, Inc.
22 West First Street
Mount Vernon, New York 10550

State of New York
Unemployment Insurance Division
Building #12
State Office Building Campus
Albany, New York 12226
Attention: Mr. Henry J. Gorko

Greenhill & Speyer, Esqs.
Attorneys for The Hartford Fire Insurance Co.
56 Pine Street
New York, New York 10005

A00056

STIPULATION CONCERNING FACTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
PPG INDUSTRIES, INC.,

Plaintiff,

-against-

THE HARTFORD FIRE INSURANCE
COMPANY and UNITED STATES OF
AMERICA,

Defendants.
-----x

:
:
:
:
: STIPULATION CONCERNING
: FACTS

:
: 73 Civ. 3550 W.C.C.
:
:
:

At a conference in the offices of Magistrate Harold Raby on January 7, 1974 the undersigned parties to this action stipulated the following facts in order to enable the Magistrate to report concerning the various motions referred to him by the order of Hon. Marvin E. Frankel dated November 14, 1973, the case having been subsequently reassigned to Hon. William C. Conner:

1. Car Color Inc. (hereinafter "Car Color") was a New York State corporation doing business at 910 Nepperhan Ave., Yonkers, New York during 1970 and 1971.

2. Car Color purchased various merchandise and equipment from PPG Industries Inc. (hereinafter "PPG").

3. A certain document entitled "security agreement" was executed by authorized agent of Car Color and PPG on September 28, 1970, and filed with the Secretary of State, State of New York, on October 7, 1970, and filed with the County Clerk, Westchester County, in White Plains, N.Y. on October 8, 1970. Copy of security agreement and "financing statement" attached, Exhibit A.

A00057

4. A suit was commenced by PPG against Car Color in Supreme Court, State of New York, County of New York, Index #5190/72 for goods sold and delivered by service on the Secretary of State on March 3, 1972. A default judgment was entered in said suit on April 14, 1972 in the sum of \$12,300.90, no part of which has been paid to the present date.

5. A fire occurred at the Car Color place of business on December 23, 1971. A fire insurance policy in the principal sum of \$25,000 was in effect on the contents under Hartford Fire Insurance Company policy #12FS364693. The only named insured or loss-payee on the policy was Car Color. Hartford denied liability, resulting in a suit on the policy by Car Color for breach of the insurance contract.

6. Said suit was commenced on November 29, 1972 in Supreme Court, Westchester County, and removed by Hartford to the United States District Court for the Southern District of New York, where it was assigned Index #73 Civ. 157. The case was tried before Judge Milton Pollack on April 23, and April 24, 1973, and resulted in a verdict in favor of Car Color, with judgment awarded in the sum of \$7,354.29 with interest from April 3, 1972 at 6%. Car Color is additionally entitled to costs of the action in the sum of \$45.

7. Henkin & Henkin, Esqs. represented Car Color in said action pursuant to a retainer agreement executed in May 1972 pursuant to which the attorneys were to receive a fee equal to 1/3 of the proceeds of a successful lawsuit or settlement. The said judgment was obtained solely through the efforts of Messrs. Henkin & Henkin, who are to submit herewith a statement of the time and effort required for the prosecution of said action.

8. On February 11, 1972, in Atlanta, Georgia, a "summons of garnishment" was served by PPG on Hartford.

A00058

On March 20, 1972 Hartford entered into a stipulation in Atlanta in connection with the said summons. (Summons and stipulation attached hereto as Exhibit B.) There is no record that Car Color was served in said suit or proceeding, and there is no record of the service of any other papers in said suit or proceedings.

9. On May 29, 1973 a restraining notice was served by PPG on Hartford in connection with the judgment of April 14, 1972 (copy attached, Exhibit C).

10. On June 22, 1973 PPG delivered to the Sheriff of New York County for service upon Hartford an execution against the proceeds of the policy. Same was served on Hartford on June 26, 1973 (copy attached, Exhibit D).

11. On December 10, 1971 the United States Internal Revenue Service made an assessment against Car Color in the sum of \$1252.25 for the unpaid balance of federal withholding taxes due September 30, 1971. A notice of lien for same was filed with the Secretary of State in Albany, New York on May 4, 1972 (copy attached, Exhibit E).

12. On March 27, 1972 the United States Internal Revenue Service made an assessment against Car Color for the sum of \$825.85 representing the unpaid balance of federal withholding taxes due as of December 31, 1971. On May 4, 1972 the government filed a notice of lien for this amount with the Secretary of State in Albany, New York (copy attached, Exhibit F).

13. Car Color ceased to do business after the date of the fire, December 23, 1971, with the exception of certain collections of receivables for sales made prior to the fire, which ceased during January 1972 at which time the premises at 910 Nepperhan Avenue, Yonkers, New York were vacated.

14. A notice of levy with respect to the aforesaid two tax assessments against Car Color was served on Hartford on

A00059

October 12, 1972. (Copy attached, Exhibit G.)

15. A final demand for payment in connection with the said notice of levy was made against Hartford on April 30, 1973 (copy attached, Exhibit H).

16. On May 11, 1973 the State of New York, Department of Labor filed a claim against Car Color for unemployment insurance taxes for the third and fourth quarters of 1971, with interest and penalties totaling \$166.88 (copy of letter attached, Exhibit I).

17. On July 9, 1973 the State of New York, Tax Commission filed with the County Clerk, Westchester County, a warrant against Car Color for withholding taxes in the total amount of \$1148.58, plus interest at 6% for the period 1970, 1971, and 1972 (copy attached, Exhibit J).

18. On or about July 13, 1973 the New York State Tax Commission filed with a warrant against Car Color for sales taxes totaling \$6784.45, for the period May 31, 1971 through February 28, 1973 (copy attached, Exhibit K).

19. It is agreed that the appearance of Car Color in this proceeding shall not be construed as acquiescence in or ratification of the amounts or propriety of the tax assessments made by the State of New York herein.

20. Car Color is willing to have the entire proceeds of this judgment distributed in accordance with the order of this court, and all parties to this stipulation concur therein.

21. Hartford's motion for an order impleading Car Color, Henkin & Henkin, and the State of New York as party defendants is consented to by the undersigned. Each of the said impleaded defendants hereby appears and agrees to answer.

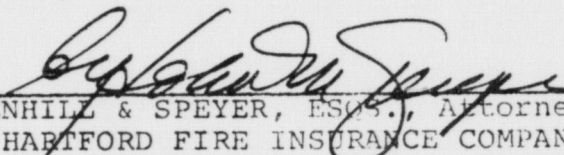
22. The motions of the New York State Tax Commission and Henkin & Henkin for an order allowing them to intervene are, in light of the preceding paragraph, withdrawn.

A00009

23. Hartford, through its attorneys Greenhill & Speyer, seeks an order discharging it from all liability to all parties herein upon payment of the funds as directed by this court. Hartford has incurred no court costs in this action, but requests the award of attorneys fees out of the funds herein, and submits the attached affidavit in that connection.

Dated: New York, New York
February 20, 1974

JACOB F. GOTTESMAN, ESQ.
Attorney for PPG INDUSTRIES, INC.


GREENHILL & SPEYER, ESQS., Attorneys
for HARTFORD FIRE INSURANCE COMPANY

PAUL J. CURRAN, ESQ., United States
Attorney for the Southern District
of New York, Attorney for the UNITED
STATES OF AMERICA, By: THOMAS GORMAN
REILLY, Assistant United States Attorney

LOUIS J. LEFKOWITZ, ESQ.
Attorney General of the State of New York
By: DAVID H. BERMAN
Two World Trade Center
New York, New York 10047

HENKIN & HENKIN, ESQS.
Attorneys for CAR COLOR INC.
22 West First Street
Mount Vernon, New York

HENKIN & HENKIN, ESQS.
as Claimants to the Fund
22 West First Street
Mount Vernon, New York

A00061

SECURITY AGREEMENT

THIS AGREEMENT made this 28th day of September, 1977 between PPG INDUSTRIES, Inc., a Pennsylvania corporation with its principal office at One Gateway Center, Pittsburgh 22, Pennsylvania, (hereinafter referred to as "SECURED PARTY") and

☐ an individual or individuals
☒ a corporation (CHECK ONE)
☐ a partnership

Car Color, Inc.

of 910 Kepperhan Ave.
Yonkers
 STREET CITY

Westchester
 COUNTY

New York
 STATE

(hereinafter referred to as "BORROWER").

The parties hereto, intending to be legally bound, agree as follows:

1. Meaning of Terms Used Herein:

- (a) "Inventory" means paints or any other products manufactured or distributed by PPG INDUSTRIES, Inc. now owned or hereafter acquired and held for sale or furnished or to be furnished under contracts of service or used or consumed in Borrower's business;
- (b) "Equipment" means those goods, merchandise and other personal property used in Borrower's business as follows:

(DESCRIBE INCLUDING SERIAL NUMBER)

- (c) "Borrower" includes all persons or corporations executing this Agreement as parties hereto and all members of a partnership when Borrower is a partnership, each of whom shall be jointly and severally liable individually and as partners hereunder;
- (d) "Security Interest" means an interest in property which secures payment or performance of an obligation;

- (e) "Collateral" means the Inventory and Equipment described herein in which Secured Party is granted a Security Interest;
- (f) "Liability" or "Liabilities" includes all liabilities (primary, secondary, direct, contingent, sole, joint or several) due or to become due or that may be hereafter contracted or incurred, of Borrower to Secured Party.

2. Borrower hereby grants to Secured Party to secure all of Borrower's Liabilities a security interest under the Uniform Commercial Code in the Inventory owned by Borrower at the date of this agreement; the Inventory at any time hereafter acquired by Borrower; all proceeds of such Inventory; and the Equipment which is used in Borrower's business, to secure the payment of all liability or liabilities of Borrower to Secured Party, all cost and expenses incurred by Secured Party in the collection of same, all future advances by Secured Party for taxes, levies, insurance and repairs to or maintenance of the collateral and all other past, present, future, direct or contingent liabilities of Borrower to Secured Party.

3. So long as any liability to Secured Party is outstanding, Borrower will not, without the prior written consent of Secured Party, borrow from anyone or pledge or grant any security interest in any account or contract right or any of the Inventory or Equipment to anyone except Secured Party or permit any lien or encumbrance to attach to any of the foregoing or any levy to be made thereon, or any financing statement, except Secured Party's statement, to be on file with respect thereto.

4. Borrower represents that the location where it keeps the Inventory and Equipment is at the address specified above unless a different address is specified in the following space:

and that all of Borrower's places of business are in the county set forth above. Borrower will immediately advise Secured Party in writing of the opening of any new place of business or the closing of any existing place of business and of any change in the location of the places where the Inventory and Equipment is kept.

5. Borrower will (a) maintain Inventory in such quantities that the value of said Inventory and Equipment at cost shall be at least equal to its liabilities to Secured Party; (b) sell the Inventory only in the ordinary course of business; (c) furnish Secured Party at such intervals as Secured Party may prescribe with a Borrower's certificate (in such form as Secured Party may from time to time specify) showing the aggregate cost value of the Inventory; (d) keep accurate and complete records of the Inventory and Equipment; (e) pay and discharge when due all taxes, levies and other charges on the Inventory and Equipment; (f) keep the Inventory and Equipment insured for the benefit of Secured Party (to whom loss shall be payable) and in such amount and with such companies and against such risks as may be satisfactory to Secured Party; pay the cost of all such insurance; and deliver certificates evidencing such insurance to Secured Party; and Borrower assigns to Secured Party all right to receive proceeds of such insurance; (g) join with Secured Party in executing a financing statement, notice of affidavit or similar instrument in form satisfactory to Secured Party and such other instruments as Secured Party may from time to time request and consents to the filing of same at any public office deemed advisable by Secured Party; and (h) give Secured Party such financial statements, reports, certificates, lists of Inventory and other data concerning its accounts, contracts, collections, Inventory, Equipment and other matters as Secured Party may from time to time specify, and permit Secured Party or its nominee to examine all of Borrower's records relating thereto at any time and to make extracts therefrom and to inspect and check Borrower's Inventory and Equipment clear of all encumbrances and security interests other than the Secured Party's security interest.

6. Borrower warrants that it is and will be the absolute owner of its Inventory and Equipment clear of all encumbrances and security interests other than the Secured Party's security interest.

7. Borrower shall pay Secured Party such amounts as may be agreed upon in accordance with promissory note of even date herewith and shall repay to Secured Party all costs, including attorneys' fees, incurred by it in the preservation of collateral.

8. Secured Party shall have the right at any time and from time to time, without notice, to: (a) insure Inventory and Equipment to its satisfaction at Borrower's expense if Borrower fails to do so; (b) pay, for the account of Borrower, any taxes, levies, or other charges affecting Borrower's Inventory and Equipment which Borrower fails to pay; and any such payment shall constitute a liability of Borrower.

EXHIBIT A

A00062

they are received; (c) to evidence Secured Party's rights hereunder, assign or endorse proceeds to Secured Party; (d) notify account debtors that their accounts have been assigned to Secured Party and shall be paid to Secured Party and indicate on all invoices to such account debtors that the accounts are payable to Secured Party. Secured Party shall have full power to notify account debtors, collect, compromise, endorse, sell or otherwise deal with proceeds in its own name or that of Borrower at any time. Secured Party in its discretion may apply cash proceeds to the payment of any liabilities or may release such cash proceeds to Borrower for use in the operation of Borrower's business.

10. Borrower will (a) keep the Equipment in good condition and repair, reasonable wear and tear excepted; (b) permit Secured Party to inspect the Equipment at any time; (c) not permit any of the Equipment to be sold or removed from the above location without the prior written consent of the Secured Party; (d) not permit any of the Equipment to be levied upon under any legal process nor dispose of any of the Equipment without the prior written consent of Secured Party; and (e) not permit the Equipment to be a fixture or to become an accession to other goods.

11. Until default, Borrower may use the Inventory and Equipment in any lawful manner not inconsistent with this agreement, and may sell the Inventory in the ordinary course of business.

12. If at any time any warranty, representation, certificate or statement of Borrower is not true or if any event of default as defined in any note or other evidence of liability held by Secured Party should occur or if Borrower should fail to observe or perform any term hereof, all liabilities of Borrower to Secured Party shall immediately become due and payable, and Secured Party may in addition to any other rights and remedies which it may have, immediately and without demand, exercise any and all of the rights and remedies granted to a secured party upon default under the Uniform Commercial Code.

13. Secured Party may require Borrower to assemble its Inventory and Equipment and make it available to Secured Party at a place to be designated by Secured Party which is reasonably convenient to Secured Party and Borrower. Borrower shall pay to Secured Party on demand any and all expenses, including legal expenses and reasonable attorneys' fees incurred or paid by Secured Party in protecting and enforcing liabilities and the rights of Secured Party hereunder, including Secured Party's right to take possession of Borrower's Inventory and its proceeds and Equipment and to hold, prepare for sale, sell and dispose of such Inventory and Equipment. Any notice of sale, disposition or other intended action by Secured Party, sent to Borrower at the address specified herein, or such other address of Borrower as may from time to time be shown on Secured Party's records, at least five days prior to such action, shall constitute reasonable notice to Borrower.

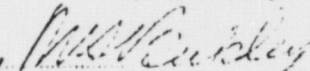
14. Exercise or omission to exercise any right of Secured Party shall not affect any subsequent right of Secured Party to exercise the same. The provisions of this agreement shall be in addition to those of any such note or other evidence of any liability, all of which shall be construed as one instrument.

15. This Agreement and the security interest in the Inventory and Equipment created hereby shall terminate when the Liabilities have been paid in full. Prior to such termination, this shall be a continuing Agreement. If any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

PPG INDUSTRIES, Inc.

(Secured Party)

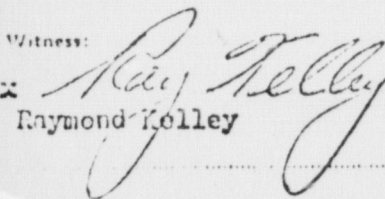
By



R. H. Peckley District Credit Manager

(USE APPROPRIATE SIGNATURE LINES)

Witness:



Raymond Kolley

(Borrower)

(INDIVIDUAL)

(SEAL)

(INDIVIDUAL)

(SEAL)

Witness or Attest:

(CORPORATE SEAL)

Car Color, Inc.
(CORPORATION OR PARTNERSHIP)

X X By



(NAME AND TITLE)

(IF PARTNERSHIP, ALL PARTNERS MUST SIGN)

LANDLORD'S WAIVER

WHEREAS, the Borrower, has executed and delivered a Security Agreement to PPG INDUSTRIES, Inc., Secured Party, covering certain inventory and equipment to be located

NOW, THEREFORE, the undersigned Landlord of the said premises, intending to be legally bound hereby, does waive, relinquish, and release unto the Secured Party, its successors and assigns, all right of levy or distraint for rent and all claims, liens and demands of every kind which said Landlord has or may hereafter have against said inventory and equipment, this waiver to continue until termination of the Security Agreement.

IN WITNESS WHEREOF, the undersigned has executed this waiver under seal this _____ day of _____, 19 ____

Witness or Attest:

(LANDLORD)

A00063

For filing pursuant to

1. Debtor(s) (Last Name First) and Address(es):

Car Color, Inc.
210 Nepperian Ave.
Yonkers, New York

2. Secured Party(ies): Name(s) and Address(es):

PPG Industries, Inc.
One Gateway Center
Pittsburgh, Pa.

4. For Filing Officer: Date, Time, No. Filing Office

5. This Financing Statement covers the following types (or items) of property:

See attached Security Agreement

☒ Proceeds are also covered.☐ Products of the Collateral are also covered.

8. Describe Real Estate Here:

9. Name(s) of
Record
Owner(s):

6. Assignee(s) of Secured Party and Address(es)

7. ☐ The described crops are growing or to be grown on.
☐ The described goods are or are to be affixed to.
(Describe Real Estate Below)

No. & Street

Town or City

County

Section

Block

Lot

10. This statement is filed without the debtor's signature to perfect a security interest in collateral (check appropriate box)

☒ Under a security agreement signed by debtor authorizing secured party to file this statement.☐ Already subject to a security interest in another jurisdiction when it was brought into this state.☐ Which is proceeds of the original collateral described above in which a security interest was perfected:

By

(Signature(s) of Debtor(s))

By

Signature(s) of Secured Party(ies)

(2) Filing Office Copy — Acknowledgment

(9/65) NY STANDARD FORM - FORM UCC-1 — Approved by John P. Lomenzo, Secretary of State of New York

This FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code.

No. of Additional
Sheets PresentedMaturity Date
3. (optional):

1. Debtor(s) (Last Name First) and Address(es):

Car Color, Inc.
210 Nepperian Ave.
Yonkers, New York

2. Secured Party(ies): Name(s) and Address(es):

PPG Industries, Inc.
One Gateway Center
Pittsburgh, Pa.

4. For Filing Officer: Date, Time, No. Filing Office

3.00 9.00 AM
OCT 8 '70 MS 101,319

5. This Financing Statement covers the following types (or items) of property:

See attached Security Agreement

☒ Proceeds are also covered.☐ Products of the Collateral are also covered.

8. Describe Real Estate Here:

9. Name(s) of
Record
Owner(s):

6. Assignee(s) of Secured Party and Address(es)

7. ☐ The described crops are growing or to be grown on.
☐ The described goods are or are to be affixed to.
(Describe Real Estate Below)

No. & Street

Town or City

County

Section

Block

Lot

A00064
SUMMONS OF GARNISHMENT

LEONARD, MARY, EUGENIE & SONS
ATTORNEYS AT LAW
14 PRYOR STREET, NORTH EAST
ATLANTA, GA. 30303
525-8521

CIVIL COURT OF FULTON COUNTY.
GEORGIA, FULTON COUNTY.

No. 402123

To: HARTFORD FIRE INSURANCE COMPANY
& Mr. Harold Brown
100 Edgewood Avenue
Hartford Building
Atlanta, Georgia

Address

YOU ARE HEREBY REQUIRED to appear at the Civil Court of Fulton County, No Sooner Than Thirty (30) Days, And No Later Than Forty-Five (45) Days After Date Of Service, and in writing make your Answer of Garnishment, in which you state what property, money or effects you had in your hands at the date of service of this Summons, belonging to the defendant in the case of

PPG INDUSTRIES, INC.

versus

CAR COLOR, INC.
910 Nepperhan Avenue
Yonkers, N.Y. 10701

AND also state what property, money or effects of the said Defendant have come into your hands between the time of the service of this Summons, and the time of making your Answer; and what you owed the Defendant at the date of the service of this Summons, and what amount you have become indebted to the Defendant since the service of this Summons.

Witness the Honorable THOMAS L. CAMP, Chief Judge of said Court.

This FEB -4 1972, 19

Deputy Clerk, Civil Court of Fulton County

IMPORTANT INSTRUCTIONS

1. Answer cannot be filed sooner than thirty (30) days after service of Summons of Garnishment on the Garnishee; and no later than forty-five (45) days after date of service of Summons of Garnishment on the Garnishee.
2. File your Answer at 102 Civil Court Building, 160 Pryor St., S. W.
3. If you are not familiar with the Georgia law applying in garnishment cases, consult your attorney, or otherwise obtain correct information, before paying the Defendant any sum after you have been served with this Summons of Garnishment.
4. A letter is insufficient, even though the Defendant is not employed by you.
5. A sworn Answer must be filed.
6. Plaintiff, or their counsel, is the only one who can authorize the Court to issue a Release, and relieve you of filing Answer to this Summons.
7. Failure of Garnishee to Answer may result in default judgment against the garnishee.

DEFENDANT'S

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.

Georgia, Fulton County.
Service perfected on Garnishee, this 11 day of Feb - 1968.

Deputy Marshal.

A00065

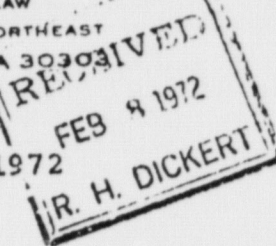
LIPSHUTZ, MACEY, ZUSMANN & SIKES

ATTORNEYS AT LAW

64 PRYOR STREET, NORTHEAST

ATLANTA, GEORGIA 30303

February 4, 1972



404 522 8680
825-8521

FEB 9 1972

Hartford Fire Insurance Company
690 Asylum Avenue
Hartford, Conn. 06115

Re: PPG Industries, Inc.

Vs: Car Color, Inc.
910 Nepperhan Avenue
Yonkers, N.Y. 10701
Garnishee: Yourself

Principal \$11,900.00
Interest 832.92
Court costs to date \$16.00
Total \$12,748.92

Gentlemen:

Please be advised that today we filed suit by attachment on the grounds of defendant's non-residence. The attachment will be executed by service of Summons of Garnishment on your agent here. Be assured of our desire to cooperate with you, and to this end we are sending you immediate notice.

If you already mailed your draft to the insured for this loss, we recommend that you stop payment immediately. Under Georgia law, a draft is not payment until the draft itself is paid by your bank, and an attachment and garnishment take precedence over such unpaid drafts.

Please inform the insured of this attachment, sending us a copy of your letter. At your earliest convenience, please advise us the status of the adjustment, and to whom the releases should be sent when the claim is paid.

Sincerely,

Marianne Crowe
Marianne Crowe

CC: Hartford Fire Insurance Co.
Atlanta, Georgia

AC 066
STATE OF GEORGIA

CIVIL COURT OF FULTON COUNTY
PPG INDUSTRIES, INC.

Plaintiff	\$	
	\$	
	\$	
VS	\$	CASE NO. 402133
CAR COLOR, INC.	\$	
	\$	
Defendant	\$	
	\$	
HARTFORD FIRE INSURANCE	\$	
COMPANY	\$	
Garnishee	\$	

STIPULATION

Whereas, a general attachment has been issued in the above styled case and garnishment served on the insurance company above identified as garnishee, and the loss has not yet been adjusted so that the liabilities, if any, of said garnished insurance company can be determined; now, therefore, it is agreed between the plaintiff and the garnishee, subject to the approval of the Court, that said garnishee need not file answer to said garnishment until said loss is adjusted, or until requested in writing to do so by plaintiff's attorney, or notified to do so by the Clerk of Court; and, it is further agreed, subject to the approval of the Court, that this case be placed on the stipulation docket upon payment of the balance of court costs which have accrued, said to be advanced by the plaintiff.

This 20th day of March, 1972

SHUTZ, MACEY, ZUSMANN & SIKES

Attorneys for Plaintiff
64 Pryor Street, N. E.
Atlanta, Georgia 30303
525-8521

Hartford Fire Ins. Co.
Garnishee
By: Harold D. Brown Sign

A00067

Whereas, a general attachment has been issued in the above styled case and garnishment served on the insurance company above identified as garnishee, and the loss has not yet been adjusted so that the liabilities, if any, of said garnished insurance company can be determined; now, therefore, it is agreed between the plaintiff and the garnishee, subject to the approval of the Court, that said garnishee need not file answer to said garnishment until said loss is adjusted, or until requested in writing to do so by plaintiff's attorney, or notified to do so by the Clerk of Court; and, it is further agreed, subject to the approval of the Court, that this case be placed on the stipulation docket upon payment of the balance of court costs which have accrued, same to be advanced by the plaintiff.

This 20th day of March, 1972

LIPSHUTZ, MACEY, ZUSMANN & SIKES

BY: _____

Attorneys for Plaintiff
64 Pryor Street, N. E.
Atlanta, Georgia 30303
525-8521

Hartford Fire Ins. Co.
Garnishee

By: Harold D. Brown Jr.

O R D E R

The above and foregoing stipulation is hereby approved and ordered filed of record in this case.

This _____ day of _____, 197

JUDGE

CIVIL COURT OF FULTON COUNTY

AD0068.

TY OF NEW YORK

INDUSTRIES, INC.

Index No. 5190/1972

Plaintiff

RESTRAINING NOTICE
TO GARNISHEE

against

CAR COLOR, INC.

Defendant

Re: Car Color, Inc.

Judgment Debtor

The People of the State of New York

TO Hartford Fire Insurance Company, 123 William Street, Garnishee; GREETING:
New York, New York

WHEREAS, in an action in the Supreme court of the State of New York
county of New York between PPG Industries, Inc.,

Car Color, Inc., of 910 Nepperham Avenue, Yonkers, New York as plaintiff and
as defendant

who are all the parties named in said action, a judgment was entered on April 14, 19 72
in favor of PPG Industries, Inc., judgment creditor and against

Car Color, Inc., judgment debtor
in the amount of \$ 12,300.90 of which \$ 12,300.90 together with interest thereon
from April 14, 19 72 remains due and unpaid; and

WHEREAS, it appears that you owe a debt to the judgment debtor or are in possession or in custody of
property in which the judgment debtor has an interest;

Proceeds of Policy #12 FS 364693 in the amount of \$7,354, pursuant
to a judgment rendered in favor of defendant against the Hartford Fire
Insurance Company.

TAKE NOTICE that pursuant to subdivision (b) of Section 5222 of the Civil Practice Law and Rules,
which is set forth in full herein, you are hereby forbidden to make or suffer any sale, assignment or transfer of,
or any interference with, any such property or pay over or otherwise dispose of any such debt except as therein
provided.

TAKE FURTHER NOTICE that this notice also covers all property which the judgment debtor has
an interest hereafter coming into your possession or custody, and all debts hereafter coming due from you to
the judgment debtor.

CIVIL PRACTICE LAW AND RULES

Section 5222 (b) Effect of restraint; prohibition of transfer; duration. A judgment debtor served with a restraining notice is forbidden
to make or suffer any sale, assignment, transfer or interference with any property in which he has an interest, except upon direction of the
sheriff or pursuant to an order of the court, until the judgment is satisfied or vacated. A restraining notice served upon a person other
than the judgment debtor is effective only if, at the time of service, he owes a debt to the judgment debtor or he is in the possession or
custody of property in which he knows or has reason to believe the judgment debtor has an interest, or if the judgment creditor has stated
in the notice that a specified debt is owed by the person served to the judgment debtor or that the judgment debtor has an interest in
specified property in the possession or custody of the person served. All property in which the judgment debtor is known or believed
to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all
debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor, shall be subject to
the notice. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay
over or otherwise dispose of any such debt, to any person other than the sheriff, except upon direction of the sheriff or pursuant to an order
of the court, until the expiration of one year after the notice is served upon him, or until the judgment is satisfied or vacated, whichever event
first occurs. A judgment creditor who has specified personal property or debt in a restraining notice shall be liable to the owner of the property
or the person to whom the debt is owed, if other than the judgment debtor, for any damages sustained by reason of the restraint. If a
garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor in an amount equal to
twice the amount due on the judgment, the restraining notice is not effective as to other property or money.

TAKE FURTHER NOTICE that disobedience of this Restraining Notice is punishable as a contempt
of court.

Dated: New York, May 29, 1973

JACOB F. GOTTESMAN

Attorney(s) for Judgment Creditor
Office and Post Office Address

295 Madison Avenue
New York, New York 10017
Telephone No. NY 3-2626

EXHIBIT C

Space provided if debt or property is to be specified.

A00069

in blank suggested: original; office copy; 2 copies each for debtor
and garnishee if officer cannot serve personally.

CHAMBERS PLACE AT BROADWAY, NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No. 5190/72

PPG INDUSTRIES, INC.

Plaintiff

against

CAR COLOR, INC.

Defendant

EXECUTION
WITH NOTICE TO
GARNISHEE

The People of the State of New York

TO THE SHERIFF OF ANY COUNTY, GREETING:

WHEREAS, in an action in the SUPREME court of THE STATE OF NEW YORK
county of NEW YORK between PPG INDUSTRIES, INC.

CAR COLOR, INC.

as plaintiff and
as defendant
1972

who are all the parties named in said action, a judgment was entered on April 14th
in favor of PPG INDUSTRIES, INC.
and against CAR COLOR, INC.

judgment creditor
judgment debtor

whose last known address is 910 Nepperham Avenue, Yonkers, New York
in the amount of \$ 12,300.90 including costs, of which \$12,300.90
with interest thereon from April 14th, 1972 remains due and unpaid; and

together

WHEREAS, a transcript of the judgment was filed on 19 with
the Clerk of the County of , in which county the judgment was entered; and

WHEREAS, a transcript of the judgment was docketed in the office of the Clerk of your county on
19

NOW, THEREFORE, WE COMMAND YOU to satisfy the said judgment out of the real and personal
property of the above named judgment debtor and the debts due to him; and that only the property in which
said judgment debtor who is not deceased has an interest or the debts owed to him shall be levied upon or sold
hereunder; AND TO RETURN this execution to the clerk of the above captioned court within sixty days after
issuance unless service of this execution is made within that time or within extensions of that time made in
writing by the attorney(s) for the judgment creditor .

Notice to Garnishee

TO: HARTFORD FIRE INSURANCE CO.

ADDRESS: 123 William Street, New York, New York

WHEREAS, it appears that you are indebted to the judgment debtor, above named, or in possession or
custody of property not capable of delivery in which the judgment debtor has an interest, including, without

N-5M-1013047(71)

SHERIFF'S LEVY BY SERVICE OF EXECUTION

LEVY: I HEREBY LEVY to the extent necessary to satisfy the judgment with interest, sheriff's fees and expenses
on any interest of the judgment debtor named in the copy of Execution served upon you herewith in all personal
property not capable of delivery which is in your possession or custody and upon any debt you owe to the judgment
debtor, not specifically exempt from levy by law. This includes but is not limited to a partnership interest, an inter-
est in a decedent's estate or in any property or fund held or controlled by a fiduciary, and any right or share in the
stock of an association or corporation for which a certificate of stock is not outstanding, together with interest,
dividends or profits accruing thereon and therefrom.

EFFECT OF LEVY: This levy affects any existing debt, which is past due, currently due or yet to become due,
certainly or upon demand of the judgment debtor, wherever incurred, including any cause of action which the
judgment debtor can assign or transfer wherever accruing, and any existing interest of the judgment debtor in
personal property not capable of delivery which the judgment debtor can assign or transfer, whether it consists of
a present or future right or interest and whether or not it is vested, including any debt or personal property not
capable of delivery specified in a notice accompanying the Execution; and, it also affects the judgment debtor's
interest in personal property not capable of delivery hereafter coming into your possession or custody and all debts
hereafter coming due from you to the judgment debtor, until you pay or transfer the debt or property to the
Sheriff.

YOU ARE FORBIDDEN BY LAW, for ninety days after this service and for such additional time as the Court by
order may provide, to transfer, pay over, or otherwise dispose of the debt or property so levied upon as hereinbefore
described to any person other than the Sheriff, except by written direction of the Sheriff. The Sheriff has and
shall have upon the levied property for his statutory fees and poundage.

DEMAND: 1. I HEREBY DEMAND that you furnish me forthwith with a STATEMENT, IN DUPLICATE,
specifying the amount and nature of any and all such property of the judgment debtor, including the maturity dates
of debts. If you do not, you are subject to examination under oath by direction of the Court.

2. I HEREBY FURTHER DEMAND that you forthwith transfer all such property and pay over to
me all such debts upon maturity, and execute any document necessary to effect the transfer or payment. If you do
not, you are subject to suit by the judgment creditor to recover such property or the amount of your indebtedness,
obligation or other accountability with costs and expenses.

DISCHARGE: Such payment or transfer shall discharge you from your obligation to the judgment debtor to the
extent of the payment or transfer. THE AMOUNT OF \$ 12,300.90 WHICH INCLUDES SHERIFF'S FEES,
POUNDAGE AND INTEREST TO IS NECESSARY TO SATISFY THE
EXECUTION. Make checks payable to the Sheriff, City of New York, and indicate the name of the case when
remitting.

Dated, the 26 day of Jan 1973

[Signature]
Deputy Sheriff
566-5715

PLEASE REPLY TO THE DEPUTY SHERIFF

H. WILLIAM KEHL
Sheriff of the City of New York

JOSEPH P. BRENNAN
Under Sheriff, in Charge
New York County Division
31 Chambers Street
New York, N. Y. 10007

person
and fire

Law and Rules
Judgment debtor
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6

EXHIBIT D

DISTRICT

Manhattan

SERIAL NO.

A00070

CATS:D:37 HMF

Pursuant to the provisions of Sections 6321, 6322, and 6323 of the Internal Revenue Code, notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following-named taxpayer, taxes (including interest and penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statutes the amount of said taxes, together with penalties, interest, and costs that may accrue in addition thereto, is a lien in favor of the United States upon all property and rights to property belonging to said taxpayer.

3.00 9.00
MAY 4 1972 217,018

NAME OF TAXPAYER

CAR COLOR INC (a Corporation)

RESIDENCE

910 Napperhan Avenue, Yonkers, NY 10703

CLASS OF TAX (Tax Return Form No.) (a)	PERIOD ENDED (b)	ASSESSMENT DATE (c)	IDENTIFYING NUMBER (d)	UNPAID BALANCE OF ASSESSMENT (e)
941	09-30-71	12-10-71	13 2666205	\$1,252.25
PLACE OF FILING Secretary of State Dept of State Albany NY				TOTAL \$ 1,252.25

IN WITNESS my hand at 45 South Broadway, Yonkers, NY 10701, on this,

_____, day of May, 1972

APPROVE

TITLE

John H. Hunt

Signature of taxpayer or authorized representative is not essential to the validity of Notice of Federal Tax Lien (Rev. 1-6-64).

This document is not to be used for any other purpose.

(REV. 8-67)

A00071

SERIAL NO.

CATS:D:57 IMF

Under the provisions of Sections 6321, 6322, and 6323 of the Internal Revenue Code, notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following-named taxpayer, taxes (including interest and penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statutes the amount of said taxes, together with penalties, interest, and costs that may accrue in addition thereto, is a lien in favor of the United States upon all property and rights to property belonging to said taxpayer.

3.00 9.00
MAY 4/72 117,000

NAME OF TAXPAYER

CAR COLOR INC (a Corporation)

RESIDENCE

910 Hesperian Avenue, Yonkers, NY 10703

CLASS OF TAX (Tax Return Form No.) (a)	PERIOD ENDED (b)	ASSESSMENT DATE (c)	IDENTIFYING NUMBER (d)	UNPAID BALANCE OF ASSESSMENT (e)
941	12-31-71	03-27-72	13 2666205	\$825.85
PLACE OF FILING	Secretary of State Dept. of State Albany NY			TOTAL \$ 825.85

WITNESS my hand at 45 South Broadway, Yonkers, NY 10701 on this,

to 5th day of May, 19 72

RECEIVED

TITLE

Philip H. Flint

Revenue Officer

A person authorized by law to take acknowledgments is not essential to the validity of this document.

Form 2—To be receipted and returned to the Internal Revenue Service.

A00072

FORM 668-A

REV. FEB. 1967

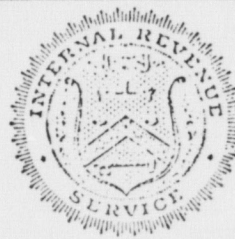
DATE

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

NOTICE OF LEVY

TO

Hartford Fire Insurance Co.
235 Mamaroneck Ave.
White Plains, N.Y. 10605
Att: Mr. Charles Hamilton



ORIGINATING DISTRICT

Manhattan

You are hereby notified that there is now due, owing and unpaid to the United States of America from the taxpayer whose name appears below the sum of \$ 2,331.65

TAX FORM NO.	PERIOD ENDED	DATE OF ASSESSMENT	IDENTIFYING NO.	UNPAID BALANCE OF ASSESSMENT	STATUTORY ADDITIONS	TOTAL
941	09-30-71	12-10-71	13-2666205	1252.25	177.02	1429.27
941	12-31-71	03-27-72	"	825.85	64.53	890.38
					Icon Fees	12.00
TOTAL AMOUNT DUE						2331.65

You are further notified that demand has been made for the amount set forth herein upon the taxpayer who has neglected or refused to pay, and that such amount is still due, owing, and unpaid from this taxpayer. Accordingly, you are further notified that all property, rights to property, moneys, credits, and bank deposits now in your possession and belonging to this taxpayer (or with respect to which you are obligated) and all sums of money or other obligations owing from you to this taxpayer, or on which there is a lien provided under Chapter 64, Internal Revenue Code of 1954, are hereby levied upon and sold for satisfaction of the aforesaid tax, together with all additions provided by law, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth herein, or for such lesser sum as you may be indebted to him, to be applied as a payment on his tax liability. Checks or money orders should be made payable to "Internal Revenue Service".

SIGNATURE

H. J. Flint

TITLE

Rev. Officer

ADDRESS (CITY AND STATE)

15 S. Blauy, Yonkers, N.Y. 10701

CERTIFICATE OF SERVICE

I hereby certify that this levy was served by delivering a copy of this notice of levy to the person named below.

NAME

Mr. Frank York

TITLE

Mgt.

DATE AND TIME

10-12-72

3:15 PM

SIGNATURE OF REVENUE OFFICER

H. J. Flint

(Name and Address of Taxpayer)

Car Color Inc.
910 Nepperhan Ave.
Yonkers, N.Y. 10703

Taxpayer's Policy # 12FS 364,693

PART 1 - TO BE RETURNED TO INTERNAL REVENUE SERVICE

FORM 668-A (REV. 2-67)

EXHIBIT G

A00073

Form 668-C
(REV. MAY 1967)U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE
FINAL DEMAND

DISTRICT

Manhattan

DATE

April 30, 1973

TO:

Hartford Fire Ins. Company
235 Memoroneck Ave. White Plains N.Y.

On October 12, 1972, there was served upon you a levy, by leaving with Mr. Frank Yank at 235 Memoroneck Ave. a notice of levy, on all property, rights to property, moneys, credits and bank deposits then in your possession, to the credit of, belonging to, or owed by Car Color Inc. of 910 Nepperhan Ave. Yonkers N.Y., who was at the time, and still is, indebted to the United States of America for unpaid internal revenue taxes, together with additions provided by law which had accrued thereon at the time of levy, and which amounted at that time to the sum of \$239.34. Demand was made upon you for the amount set forth in the notice of levy, or for such lesser sum as you may have been indebted to the taxpayer, which demand has not been met.

Your attention is invited to the provisions of section 6332, Internal Revenue Code, as follows:

SEC. 6332. SURRENDER OF PROPERTY SUBJECT TO LEVY.

(a) Requirement.—Except as otherwise provided in subsection (b), any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(c) Enforcement of Levy.

(1) Extent of Personal Liability.—Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a civil suit to recover the amount of taxes so surrendered, but not exceeding the amount of taxes for the collection of which such person has been made liable, and such amount shall be credited against the tax liability for the collection of which such levy was made.

(2) Penalty for Violation.—In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 10 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

(3) Effect of Placing Levy.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary or his delegate, surrenders such property or rights to property (or discharges such obligation) to the Secretary or his delegate (or who pays a liability under subsection (c)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment. In the case of a levy upon a partnership, such organization shall also be discharged from any obligation or liability to any beneficiary arising from such surrender or payment.

(4) Person Defined.—The term "person," as used in subsection (a), includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

Demand is again made for the amount set forth in the notice of levy, \$239.34, or for such lesser sum as you may have been indebted to the taxpayer at the time the notice of levy was served. If you comply with this demand within five days from its service, no action will be taken to enforce the provisions of section 6332 of the Internal Revenue Code. If, however, this demand is not complied with within five days from the date of its service, it will be deemed to be finally refused by you and proceedings may be instituted by the United States as authorized by the statute quoted above.

SIGNATURE	TITLE	ADDRESS (City and State)
<i>Robert M. Dele</i>	Revenue Officer	Yonkers, N.Y.

CERTIFICATE OF SERVICE

I hereby certify that this Final Demand was served by handing a copy thereof to:

NAME	TITLE	DATE	TIME
Frank Yank	Manager		
PLACE	DATE	TIME	
<i>Robert M. Dele</i>		4/30/73	(mailed)

EXHIBIT H



A00674
DEPARTMENT OF LABOR
STATE OFFICE BUILDING CAMPUS
ALBANY, NEW YORK 12201

EMPLOYMENT INSURANCE DIVISION

May 11, 1973

David C. Quinn, Esq.
22 West 1st Street
Mt. Vernon, NY 10550

In reply refer to:
GENERAL ASSIGNMENT
& CONTROL SECTION
E.R.#43-26997

RE: CAR COLOR INC.

Dear Sir:

This is in reply to your telephone request of May 3, 1973.

A review of our records reveals that your client's account is indebted to the New York State Unemployment Insurance Fund as follows:

<u>PERIOD</u>	<u>CONTRIBUTIONS</u>	<u>INTEREST</u>	<u>REQUEST REPORT PENALTY</u>	
1970-Yr.		\$5.80		
1971-3Q	\$76.50			
-4Q	44.28			
1971-Yr.		4.65		
1972-1Q			\$20.00	= \$151.23

Interest on above unpaid contributions computed to May 11, 1973 = 25.65
Total due as of May 11, 1973 = \$166.88

Each day after May 11, 1973, interest continues to accrue at the rate of \$.03 per day.

Upon receipt of certified payment in this amount, your client's account will be in balance, and we will forward Satisfaction of Judgment to you, which, when filed with the County Clerk, will satisfy the judgments of record.

Certified check or money order should be made payable to the New York State Unemployment Insurance Fund and mailed to the attention of the undersigned, Unemployment Insurance Division, Building #12, State Office Building Campus, Albany, New York 12226.

Very truly yours,

Henry J. Gorko
Henry J. Gorko

100-12-731

HJC:ab

~~XXXXXXXXXX~~
~~XXXXXXXXXX~~

EXHIBIT I



Warrant

STATE TAX COMMISSION

Judgment Creditor
against

CAR COLOR, INC.

Judgment Debtor

Last Known
Address 910 Nepperhan Avenue
Yonkers, N.Y.

NS 807817
NS 807396
NS 806031

PEOPLE OF THE STATE OF NEW YORK TO: JOHN J. DIAMOND
Officer or employee of the Department of Taxation and Finance; WHEREAS, a tax has been found due to the State Tax Commission of THE STATE OF NEW YORK from
debtor named, the nature and amount of which, together with the interest and penalties thereon, are as follows:

Tax imposed 22/23
by Article of the Tax Law

Taxable period or assessment no.	Tax	Penalty and/or Interest	Total
7/1- 12/31 1971	\$ 208.91	\$ 23.56	\$ 232.47
1970	259.90	57.04	316.94
1971	415.14	184.03	599.17
	\$ 883.95	\$ 264.63	\$ 1148.58

A00075

HEREAS, said tax, interest and penalties now remain wholly unpaid;

THEREFORE, WE COMMAND YOU to file a copy of this warrant within five days after its receipt by you in
office of the Clerk of the County of WESTCHESTER, for entry by him,
judgment docket, pursuant to the provisions of the Tax Law.

WE FURTHER COMMAND YOU, that you satisfy said claim of said STATE TAX COMMISSION for said tax with
interest out of the real and personal property in said county belonging to said debtor and the debts due to him.
When said copy of this warrant is so docketed in the office of the Clerk of such county or at any time thereafter,
only the property in which said debtor who is not deceased has an interest or the debts owed to him shall be levied
sold hereunder; and return this warrant and pay the money collected, within sixty days after the receipt thereof, to
the Tax Commission of the State of New York.

WARRANT received at 10:00 A.M.
M., on 10-6-1973, 19

To the Officer or Employee named above:
Levy and collect \$ 1148.58 with interest
at 6% per annum on \$ 1038.13
from 7/15/73 19
plus additional penalties as provided by law.
Issued at White Plains, N.Y.
the day of 10/6/73 19

John J. Diamond
Name and Title of Employee
Department of Taxation and Finance
JOHN J. DIAMOND

By [Signature]
STATE TAX COMMISSION
Deputy Tax Commissioner

EXHIBIT J

STATE OF NEW YORK

Department of Taxation and Finance

This warrant returned..... satisfied

..... this

day, of....., 19.....

Remarks:

.....
Name and Title of Employee
Department of Taxation and Finance

Satisfaction of a warrant in favor of State Tax Commission

against.....

For the sum of \$....., of which this is true

copy, is hereby acknowledged.

Dated the..... day of....., 19.....

STATE TAX COMMISSION

.....
Deputy Tax Commissioner

The within warrant is hereby reissued under like terms and with
the same force and effect as an original warrant, for a period
of sixty days.

Dated,....., 19.....

STATE TAX COMMISSION

.....
Deputy Tax Commissioner

Copy filed in the Clerk's office of.....

.....*Westchester*..... County, N.Y.,

on.....*7/9/73*..... 19.....

AC0076

STATE TAX COMMISSION

Judgment Debtor

Last Known Address 510 New Arthur Ave.

11823066 53120057
51217102 53120058
52171022 53120059
53511101 53120060
53120061

PEOPLE OF THE STATE OF NEW YORK TO: Officer or employee of the Department of Taxation and Finance; WHEREAS, a tax has been found due to the State Tax Commission of THE STATE OF NEW YORK the debtor named, the nature and amount of which, together with the interest and penalties thereon, are as follows:

Tax imposed by Article 22/29 of the Tax Law

HEREAS, said tax, interest and penalties now remain wholly unpaid;

HEREFORE, WE COMMAND YOU to file a copy of this warrant within five days after its receipt by you in the office of the Clerk of the County of ... for entry by him on the judgment docket, pursuant to the provisions of the Tax Law.

FURTHER COMMAND YOU, that you satisfy said claim of said STATE TAX COMMISSION for said tax with interest out of the real and personal property in said county belonging to said debtor and the debts due to him when said copy of this warrant is so docketed in the office of the Clerk of such county or at any time thereafter; only the property in which said debtor who is not deceased has an interest or the debts owed to him shall be levied and sold hereunder; and return this warrant and pay the money collected, within sixty days after the receipt thereof, to the Tax Commission of the State of New York.

NOT received at ... M. on ... 19

To the Officer or Employee named above:
Levy and collect \$... with interest
at ... on \$...
from ... 19
plus additional penalties as provided by law.
Issued at ...
the ... day of ... 19

STATE TAX COMMISSION

By

Taxable period or assessment no.	Tax	Penalty and/or Interest	Total
5/31/72	-0-	0.00	0.00
6/30/72	677.05	177.92	854.97
11/30/72	246.00	210.00	456.00
2/2/73	216.73	177.31	394.04
5/31/72	246.00	159.00	405.00
6/30/72	216.73	127.10	343.83
11/30/72	216.73	100.00	316.73
2/2/73	216.73	75.83	292.56
	2167.22	1027.16	3194.38

EXHIBIT K

XXXXXX

A00078

REPORT OF MAGISTRATE HAROLD J. BABY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PPG INDUSTRIES, INC.,

Plaintiff, :

REPORT OF
UNITED STATES
MAGISTRATE

-v-

THE HARTFORD FIRE INSURANCE COMPANY,
UNITED STATES OF AMERICA,
NEW YORK STATE TAX COMMISSION,
STATE OF NEW YORK,
CAR COLOR, INC., and
HENKIN & HENKIN, ESQS.,

73 Civ. 3550 (WCC)

Defendants.

TO THE HONORABLE WILLIAM C. CONNER, U.S.D.J.:

This proceeding involves conflicting claims to a fund of \$7,354.29, plus interest from April 1972, now held by the Hartford Fire Insurance Company as a stakeholder.

By memorandum dated November 14, 1973 (a copy of which is reproduced as Appendix A to this report) Judge Frankel referred to me, to hear and report, the following four motions relating to this proceeding:*

1. Motion of Henkin and Henkin dated 9/19/73, for an order directing payment of their legal fees from the fund now held by defendant Hartford Fire Insurance Company.
2. Motion of Hartford Fire Insurance Company dated October 1, 1973, for an order impleading Car Color, Inc., Henkin and Henkin, and the State of New York as party defendants having an interest in the fund.
3. Motion of the New York State Tax Commission dated October 2, 1973, for an order allowing it to intervene to assert a claim to the fund.
4. Motion of Henkin and Henkin dated October 11, 1973, for an order allowing them to intervene to assert a claim to the fund.

* Subsequent to the reassignment of this case to you, you continued my commission to hear and report on this matter.

Quite obviously, all but the first of these motions are procedural in nature, and relate essentially to efforts by various parties herein to make certain that all persons who have an interest in the subject matter of this litigation are properly before this Court. The first motion, on the other hand, is in effect a motion for summary judgment on behalf of the attorneys who are responsible for the adjudication which resulted in the creation of the fund which is the subject of this proceeding. Those attorneys seek an adjudication that they are entitled to first priority respecting said fund, based upon their statutory attorneys' lien under Section 475 of the New York Judiciary Law.

By consent of the parties in open court, the three procedural motions were disposed of as follows on January 7, 1974:

1. The motion by the law firm of Henkin & Henkin to intervene as a claimant was consented to, and the proposed answer of said law firm (appended to its motion papers) was deemed to be served and filed, thereby making Henkin & Henkin full parties to this action and bound by the determination thereof;

2. The motion by the New York State Attorney General to intervene on behalf of the New York State Tax Commission and also the New York State Unemployment Insurance Department was granted on consent, thereby making the State of New York bound by the determination of this case;

3. The motion by the defendant, Hartford Fire Insurance Company, to the extent that it seeks to implead Henkin & Henkin and the State of New York was withdrawn as moot in the light of the dispositions referred to in subparagraphs 1 and 2, supra. To the extent that Hartford's motion also seeks to implead,

as a defendant, Car Color, Inc., that application was similarly withdrawn as moot, in the light of the representation of Messrs. Henkin & Henkin in open court that they also represented Car Color, Inc., which would thereby be bound in all respects by the judgment ultimately to be entered in this case.

Before entering upon a detailed discussion of the substantive facts upon which the respective priorities of the competing claimants must be legally determined, it is desirable, I think, to review the prior history of this litigation, so that the basis for this Court's jurisdiction is clearly understood. That history is as follows:

June 26, 1973. The plaintiff, PPG, in its capacity as a judgment creditor of Car Color, Inc., instituted a special proceeding against the defendant Hartford, in New York County Supreme Court, pursuant to Sec. 5227 C.P.L.R., to recover moneys allegedly owed by Hartford to PPG's judgment debtor, Car Color, Inc.

August 1, 1973. The state court granted a motion by the United States to intervene in said proceeding by reason of its competing claim as a tax lien creditor of Car Color, Inc.

Aug. 15, 1973. The proceeding was removed to this Court on petition of the United States pursuant to 28 U.S.C. §§1441(b) and 1444.

Sept. 17, 1973. The United States filed its answer and cross-claim, asking judgment directing Hartford to turn over to the Government the sum of \$2,331.65* plus interest from October 12, 1972.

* At page 2 of its brief subsequently filed on March 12, 1974, the Government asks for the lesser sum of "\$2,078.10 plus statutory interest."

A90081

September 19, 1973. Henkin & Henkin, Esqs. served a motion for an order directing payment to them by Hartford, out of the fund in possession of Hartford, of the amount of their fees in connection with their services in obtaining judgment in favor of Car Color, Inc. against Hartford. (That motion, which was filed on October 5, 1973, was in effect thereafter superseded by Henkin & Henkin's subsequent motion for summary judgment dated March 22, 1974.)

October 1, 1973. Hartford served a motion, filed October 4, 1973, to implead Car Color, Inc. and Henkin & Henkin.

October 3, 1973. The Attorney General of the State of New York served a motion (filed 10/4/73) to intervene.

October 4, 1973. Hartford filed its answer to ^{the} cross-claim of the United States, in which it counterclaimed for an order permitting it to be discharged of further liability as a stakeholder upon payment of the fund in its possession to the person or persons held entitled thereto.

October 10, 1973. Henkin & Henkin served a motion (filed October 12, 1973) to intervene, to which was attached a proposed "ANSWER".

October 24, 1973. PPG filed its "REPLY" to the Answer of Henkin & Henkin, in which it was asserted that Henkin & Henkin, in acting to collect the insurance claim of Car Color, Inc. against Hartford, had acted without authorization of PPG as the lawful assignee of the

said insurance claim, and that therefore Henkin & Henkin was not entitled to be paid.

January 7, 1974. The prior motions by Henkin & Henkin and the State of New York to intervene were consented to; and an oral application by Henkin & Henkin, Esqs. for leave to intervene on behalf of their client, Car Color, Inc., was likewise consented to. In view of the foregoing, Hartford's October 1, 1973 motion to implead Henkin & Henkin, the State of New York, and Car Color, Inc. was withdrawn as moot.

February 20, 1974. A stipulation of facts was executed by counsel for the parties and presented to me.

March 12, 1974. The United States filed an application for summary judgment to complete the record, it having previously been agreed by all counsel in open court that there are no triable issues of fact and that the rights of the parties can be determined from the stipulated facts of record.

March 18, 1974. Plaintiff PPG submits application for summary judgment.

March 21, 1974. Hartford submits application for summary judgment.

March 22, 1974. Henkin & Henkin submits amended motion for summary judgment.

400083

The substantive issues to be decided in this case are the respective priorities of the various claimants to a fund presently in the possession of the Hartford Fire Insurance Company as a disinterested stakeholder. Essentially, the claims of the New York State Tax Commission and the Federal Government are claims of tax lien priority. The claim of the intervening defendants, Henkin & Henkin, is, as already indicated, based upon attorneys' charging liens which are claimed to have priority over tax liens and other liens. The claim of PPG Industries, Inc. is based upon an alleged assignment to it by Car Color, Inc., as collateral security for inventory loans, ^{of} the proceeds of fire insurance payable in the event of loss of the inventory by fire. The claim of the New York State Department of Labor, Unemployment Division, is a small one for \$166.88, based upon alleged unemployment insurance taxes due from Car Color, Inc. Finally, Hartford Fire Insurance Company, as an interpleaded stakeholder, has a claim for reasonable attorneys' fees and costs in connection with this action.

At the time I disposed of the procedural motions on January 7, 1974, it was hoped that this matter could be resolved by compromise settlement; and I accordingly adjourned the matter to give the parties an opportunity to explore that possibility. Ultimately, however, it developed that the matter could not be settled, and accordingly the United States, Henkin & Henkin, Hartford, and PPG, each submitted to me, in March, 1974, a motion for summary judgment and incident thereto, there was also filed with me a stipulation of facts,

signed by counsel for all the parties.

As hereinabove indicated, the amount of the fund in possession of the Hartford Fire Insurance Company is in the amount of \$7,354.29 exclusive of interest. On the other hand, the claims asserted against the fund are as follows:

1. Tax Claim of U.S.A.	\$ 2,078.10
2. PPG Industries	12,300.90
3. Henkin & Henkin, Esqs.	2,451.53
4. New York State Tax Commission	7,933.03
5. New York State Department of Labor	166.88
6. Hartford Fire Insurance Company (Reasonable Attorneys' Fees)	500.00*
Total	\$25,430.44

Quite obviously, the above-mentioned total of \$25,430.44 is greater than the available funds in the hands of the Hartford Fire Insurance Company with the inevitable result that not all of the claimants in this case can be paid. The fundamental principle to be followed in determining who is to be paid is the famous one enunciated in United States v. City of New Britain, 347 U.S. 81, "The first in time is the first in right." As is so often the case in matters involving lien priority the application of this principle is not as simple as the statement of the rule itself.

The conflict among the claimants must be viewed in the following factual context, as set forth in the stipulation of facts:

1. In October 1970, Car Color, Inc. entered into a security agreement with PPG under which Car Color, Inc. pledged its inventory as collateral security for loans. The security agreement which was duly filed under the

* My estimate of reasonable attorneys' fees.

A00085

provisions of the New York Uniform Commercial Code, contained a specific provision under which Car Color, Inc. assigned to PPG the proceeds of any fire insurance payable to it in the event of damage or destruction of Car Color, Inc.'s inventory by fire:

2. In December 1971 and March 1972 the Internal Revenue Service assessed taxes against Car Color, Inc.

3. On December 23, 1971 Car Color's premises were destroyed by fire and that company ceased doing business.

4. On November 29, 1972, Car Color, Inc. instituted suit in Supreme Court, Westchester County, against Hartford Fire Insurance Company to recover the proceeds of the fire insurance policy relating to Car Color Inc.'s merchandise. That suit was removed to this Court (73 Civ. 157) and resulted ultimately in a verdict and judgment (per Pollack, D.J.) on April 24, 1973, in favor of the plaintiff in the sum of \$7,354.29. The plaintiff was represented in that proceeding by the firm of Henkin & Henkin, Esqs., who contracted to receive a fee equal to one third of the proceeds of the litigation.

5. Meanwhile, in March 1972, PPG had sued Car Color Inc., presumably for money had and received, which resulted in a default judgment against Car Color Inc. in favor of PPG in the sum of \$12,300.90, which was entered in Supreme Court, New York County, index No. 5190/1972, on April 14, 1972, and no part of said judgment has yet been paid.

6. In May 1972, the Internal Revenue Service duly filed notices of tax lien with the Office of the Secretary of the State of New York, thereby preventing any further claims of priority respecting property of the taxpayer Car Color Inc.

7. Not until July 1973 did the State of New York file any tax liens against the delinquent taxpayer Car Color Inc.

A00086

In the foregoing factual context I shall now examine the respective positions of the parties.

The United States (I.R.S.)

The Federal Government concedes the position of Henkin & Henkin as first priority claimants based on that firm's attorneys lien, as well as the inherent morality and justice of the position of those attorneys as having been responsible for the creation of the fund which is the subject of this lawsuit. The Government thereupon asserts a second and fourth priority claim and suggests that third/priority should be respectively to Hartford Fire Insurance Company and given/to PPG Inc. If this formula is adopted, of course, there will be insufficient money to pay the remaining claimant, the State of New York.

The Federal Government's position that it is entitled to second priority is based upon the following arguments:

1. To the extent that PPG claims that it is entitled to proceeds of the fund by reason of its April 14, 1972 judgment against Car Color, Inc. (the judgment creditor of Hartford) the Government asserts that the April 14, 1972 judgment was not thereafter perfected by PPG to the extent of PPG's becoming a "judgment lien creditor" within the meaning of 26 U.S.C. 6323(a) as amended (see Government's Brief, pages 20 to 22).

2. To the extent that PPG claims a right to the proceeds of the fire insurance as an "assignee" of Car Color, Inc., the taxpayer, the Government claims that an assignment of proceeds of a fire insurance company is "inchoate" until the claim is reduced to judgment; and since the judgment holding Hartford liable for the loss did not occur until 1973, nearly a year after the Government had filed its Federal tax lien, PPG's claim as assignee must yield to the priority of the Federal

Government.

PPG Industries, Inc.

PPG's claim is predicated principally upon its alleged status as assignee. It relies basically on the recorded security agreement of 1970 under which, as hereinabove indicated, PPG received a specific written purported assignment of fire insurance proceeds in the event of a fire. PPG concedes that the so-called assignment may have been inchoate when made in 1970, but vigorously argues the assignment ripened to a choate chose in action upon the occurrence of the fire which destroyed Car Color, Inc.'s inventory.

The State of New York

The State of New York has filed no papers except to the extent that it has participated in the drafting of the stipulation of facts, from which the following appears:

1. In July 1973 the State of New York filed tax and withholding liens for sales/taxes totalling approximately \$7,000;
2. In May 1973 the New York State Department of Labor filed claims against Car Color for Unemployment Insurance Taxes (see paragraph 16 of stipulation of facts, to which is attached a so-called Exhibit I) in which reference is made to a prior "judgment of record" of unstated date, concerning said Unemployment Insurance Tax.

Henkin & Henkin, Esqs.

This law firm was engaged by Car Color, Inc. to sue Hartford Fire Insurance Company based upon the loss of its inventory in a fire which had occurred on December 23, 1971. Henkin & Henkin recovered judgment on that claim in this

Court (73 Civ. 157) on April 24, 1973 in the sum of \$7,354.29, which sum, of course, constitutes the res of the present lawsuit. Henkin & Henkin, having taken this case on a one third contingency basis, asks for its counsel fees and disbursements in the sum of \$2,654.25, claiming that this amount is subject to a valid statutory charging lien under Section 475 of the New York Judiciary Law.

Hartford Fire Insurance Company

Hartford's claim is merely for reimbursement for its legal expenses in its capacity as a stakeholder, willing to pay the amount of the judgment to whomever this Court adjudicates to be entitled thereto.

Discussion of Applicable Law

For reasons which I shall presently state, it is my recommendation and conclusion that the fund now in the hands of Hartford Fire Insurance Company be disposed of in the following manner:

1. Messrs. Henkin & Henkin (by reason of a valid attorneys' lien)*	\$2,654.25
2. Hartford Fire Insurance Company	500.00
3. PPG Industries, Inc.	4,200.04
4. United States of America	-0-
5. State of New York	-0-
6. Car Color, Inc.	-0-
Total	\$7,354.29

Justification of First Priority for Henkin & Henkin.

Although, as hereinabove indicated, the United States concedes a first priority to Henkin & Henkin, the rival claimant, PPG does not join in such concession and in fact asserts that its claim takes priority over everyone.

It is clear, of course, as the Government notes, that the Federal Government's tax lien claims are subordinated to * Exclusive of accrued interest at the rate of 6% per annum.

400089

Henkin & Henkin's attorneys' lien by reason of Title 26 U.S.C. Sec. 6323(b)(8). I think such concession is quite correct. In that connection, see also the case In Re Washington Square Slum Clearance, etc. 5 N.Y. 2d 300, 184 N.Y.S. 2d 585 (1959) and Herlihly v. Phoenix, 83 N.Y.S. ~~2d~~ 2d, 707 (1948).

It is clear that, as between Car Color, Inc. and its attorneys Henkin & Henkin, the latter firm has a charging lien on the proceeds of the judgment obtained by Henkin & Henkin in favor of Car Color, Inc. and against Hartford. It would therefore seem to follow logically that Car Color, Inc. is entitled only to the net proceeds of the judgment after deduction of the amount of Henkin & Henkin's lien; and that therefore PPG - even assuming that it can step into the shoes of Car Color, Inc. respecting the net amount of the judgment - cannot deprive Henkin & Henkin of their attorneys' lien.

Evidently, the reason for PPG's opposition to Henkin & Henkin's claim is that Henkin & Henkin knew, or should have known, of the assigned status of the fire insurance policy and therefore should not have prosecuted the suit without the authorization and permission of PPG as the assignee. However, there being no showing of bad faith here, it would seem to follow that by securing a judgment against Hartford, Car Color, Inc. became a trustee for the benefit of its assignee, PPG, and would be obliged to turn over the proceeds of the recovery, subject, of course, to the aforementioned charging lien.

Accordingly, I believe that Henkin & Henkin is entitled to first priority on its claim of \$2,654.25.

Hartford Fire Insurance Company

Throughout this proceeding, both in the State Court and in this Court, Hartford has asserted that it is a stakeholder, willing to pay the amount of the judgment against it in the sum of \$7,354.29 to whomever the court may determine is entitled thereto.

It has filed with this court an affidavit (appended to its notice of motion for summary judgment dated March 21, 1974) in which it is stated that Hartford's attorneys expended 12 1/2 hours of professional time in connection with the paper work and other activities involved in this litigation, the reasonable value of which amounts to \$750, and that Hartford should accordingly be reimbursed to the said extent of \$750 out of the proceeds of the fund.

The concept of compensating a stakeholder in an interpleader action is a well-recognized one. As stated in Moore's Federal Practice, Vol. 3A, ¶ 22.09, [3], "Normally, a disinterested stakeholder initiating an interpleader action ... is reimbursed out of the interpleader fund for costs including a reasonable attorneys' fee", Hartford has, of course, filed in this proceeding, a counterclaim in the nature of interpleader, in which no new parties are named, but in which Hartford merely asks this Court to determine how the fund should be distributed among the parties who have previously appeared in this action. In this context, and particularly since this Court has independent jurisdiction of this proceeding as an action involving a claim of the United States of America, I think that Hartford is correct in its assertion that it is entitled to deduct from the fund an amount equivalent to its reasonable attorneys' fees, which I hereby fix in the sum of \$500.

A00091

The United States does not oppose such an award, provided that the granting of the award does not prejudice the position of the Government as a claimant. The Government's position in that respect is quite correct, see Moore's Federal Practice, Vol. 3A, ¶ 22.09, [3] supra, where it is stated as follows:

"Where, however, the taxing of attorneys' fees would necessarily deplete a part of the fund impressed with a federal tax lien - such as where the fund is insufficient to satisfy a federal lien having priority over other claimants - the stakeholder may not be thus reimbursed. To do so would improperly award the stakeholder a lien prior in right (despite being later in time) to that of the government, and would run afoul of 28 U.S.C. §2412(a), which expressly bars the taxing of attorneys' fees in actions against the government."

In the context of this case, there is no possibility that an award of \$500 to Hartford would adversely affect the position of the Government in this case. For example, if this Court gives second priority to the Government, there will still be enough left in the fund to pay Hartford as a third priority claimant; and if, on the other hand, this Court follows my recommendation to the effect that PPG be given priority over the United States, it would follow that the fund would be exhausted before any moneys were available to pay the Government's claim.

It is accordingly recommended that \$500 from the available fund be allocated for reimbursement to Hartford for counsel fees.

PPG Industries, Inc.

I agree with the Federal Government's position that PPG is not entitled to priority by reason of its status as a "judgment creditor" of Car Color, Inc., since it is clear, on the stipulated facts, that PPG never satisfied the technical requirements to become "a judgment lien creditor".

A00092

However, I am completely convinced that as a matter of law, PPG is a valid assignee of the net proceeds of the fire insurance policy written by Hartford in favor of PPG's assignor, Car Color, Inc. The language of the security agreement is unmistakably clear; and once a fire had occurred, PPG, in my opinion, had a valid legal right to the proceeds of the policy.

The Government argues that even after the fire the so-called "assignment" of fire insurance was still "inchoate" until a judgment was obtained, and that by that time the Government had already filed its lien, thereby preventing PPG from being a valid assignee as a prior pledgee, purchaser or judgment creditor.

The Government makes three arguments in support of its position. First, it states that under the Uniform Commercial Code proceeds of insurance are not to be deemed "proceeds of the collateral"; secondly, that in any event the assignment of insurance was a mere equitable assignment, which must yield in priority to a legal lien subsequently filed. The Government thus in effect claims that the equitable assignment in this case did not become a legal assignment until judgment was obtained by Car Color, Inc. against the insurance company.

Finally, the Government asserts that the assignment was defective in that PPG neglected to obtain a "loss payable clause" from the insurer.

In my view none of these arguments can be sustained. In the first place, the references to the provisions of the Uniform Commercial Code are irrelevant, since PPG is not relying upon rules of construction contained in the Code in areas where the contract is silent, but on the language in the contract itself under which it is unmistakably provided that the insurance proceeds are assigned by Car Color, Inc. to

A00093

PPG, as further collateral security for the repayment of
outstanding inventory loans.

Secondly, it is totally unsound for the Government to deny that upon the occurrence of the fire at Car Color, Inc. headquarters, in December, 1971, a valid cause of action in contract thereby arose, which was clearly assignable. On the contrary, it is quite clear that PPG's assignment, theretofore equitable only, became a full-fledged legal and choate assignment immediately upon the happening of the fire. Indeed, if the contrary were true, by analogy, the Government could argue that no presently existing assignment of an account receivable would have priority over a Federal tax lien publicly recorded at any time before the account receivable is collected. Any such contention, if valid, would destroy the economy of this country by making it absolutely impossible for any commercial finance company to make loans on the security of assignments or pledges of accounts receivable as collateral security.

To the extent that the Government cites, as supporting its ^{position} ~~decision~~, a decision by Judge Bonsal in the unreported case of Federal Insurance Company v. Billy's Burgers, 72 Civ. 1098, I must respectfully express my disagreement with that decision. Judge Bonsal seems to have been persuaded (as the Government here contends) that a security interest in fire insurance proceeds does not become choate until the insurance company admits that it owes the money. Such holding, in my view, is contrary both to logic and prior case authority.

Despite intimations to the contrary in the Government's brief, it seems well settled that an assignment or pledge of owner's rights under a fire insurance policy, as collateral security for indebtedness (as distinguished from an absolute assignment) is valid, at least in the absence of express restriction in the policy to the contrary (see,

Central Union Bank v. New York Underwriters' Insurance Co.,

4th Cir. 1931, 52 Fed. 2d, 823 (1931)). It is stated in

that case, at page 824:

"An assignment, not of the policy itself with its obligations, but of the owner's rights thereunder by way of pledge or otherwise as security for a debt, is held valid, in the absence of express restriction to the contrary" (citing authorities).

If this is so, then such assignment like the assignment of any other contract right, e.g., a commercial account receivable, is a valid legal assignment as soon as the assigned right accrues. Just as a commercial account receivable

accrues when the merchandise is delivered to the customer, the owner's rights, under a fire insurance policy/at the moment a fire occurs; and at that moment, the rights under the account and under the policy become legally assignable.

Since the assignment in question was duly recorded under New York Law and since it ripened into a legal assignment upon the event of the fire, long prior to the Government's filing of Federal Tax liens, I find and conclude that PPG is entitled to priority after Henkin & Henkin and Hartford.

The Government makes an additional argument to the effect that the assignment must fail because of PPG's failure to have obtained a loss payable clause from the insurer. The implication behind such argument is that, had PPG obtained such loss payable clause its position would be sound. See Government's Brief, page #13, where the Government states "Now, when the horse has left the barn it is too late to close the door".

I frankly fail to understand or follow such argument; for if as the Government seems to concede, the assignment would be valid if the insurer had given a loss payable clause, what becomes of the Government's argument that the

A00095

assignment was inchoate until it was determined whether the insurer was willing to pay? Surely, the issuance of a loss payable clause does not prevent an insurance company from contesting liability.

The United States Government

For reasons hereinabove indicated, I have found that first, second and third priorities be given respectively, to Hartford, Henkin & Henkin and PPG. Since this more than exhausts the proceeds of Hartford's fund, it follows to the extent that I am correct in my recommendations, the Federal Government should receive nothing.

New York State

The Government correctly notes that the New York State Tax Commission's tax liens were filed later than the Federal tax liens and later than the judgment obtained by PPG against Car Color, Inc. Thus, it is clear that the State Tax Commission's claims are subordinate to the claims respectively of Henkin & Henkin, PPG and Hartford, and of course the United States.

The United States Attorney unaccountably seems willing to assume the possibility that the New York State Department of Labor's \$166.88 claim may have been the subject of a valid judgment prior in point of time to the filing of the Federal tax lien. In my view, the documentation furnished by the State (consisting solely of Exhibit I to the stipulation of facts) is wholly insufficient for me to make a determination as to when, if ever, such assumed judgment was filed. Thus, I recommend subordination of the New York State Labor Department's claim by reason of failure of proof.

Car Color, Inc.

Car Color, Inc., the taxpayer and judgment creditor of Hartford, asserts no claims in this proceeding and is therefore entitled to receive nothing.

CONCLUSION

For the reasons hereinabove indicated, it is my recommendation and conclusion that the principal of the fund of \$7,354.29, presently held by Hartford Fire Insurance Company as stakeholder be distributed in the following manner:

1. Messrs. Henkin & Henkin	\$2,654.25
2. Hartford Fire Insurance Co.	500.00
3. PPG Industries, Inc.	<u>4,200.04</u>
Total	\$7,354.29

It is further recommended that the claims to the fund asserted by the United States of America and the State of New York be denied. As previously noted, the remaining party hereto, Car Color, Inc., has asserted no claim therein.

It is further recommended that the proceeds of the accrued interest on the said principal fund of \$7,354.29 be apportioned to the claimants Henkin & Henkin and PPG Industries, Inc., in relationship to the respective amounts of their claims, it appearing that both claims accrued at approximately the same point in time.

Copies of this report have been mailed this date to counsel for the interested parties, who are hereby directed, pursuant to the provisions of Rule 53 F.R.C.P., that any objections to this report must be filed at your Chambers within ten days from their receipt of this report.

The following papers considered by me in this matter are forwarded herewith:

A00097

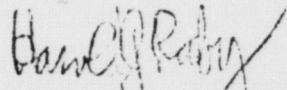
1. Motion of Henkin & Henkin, dated September 19, 1973, filed October 5, 1973, for "order directing payment".
2. Affidavit of Leonard M. Henkin in support of said motion, dated October 2, 1973, filed October 12, 1973.
3. Affirmation of Jacob F. Gottesman, Esq., dated September 28, 1973 (not yet filed) in opposition to said motion.
4. Affidavit of T. Gorman Reilly, Esq., Assistant United States Attorney, sworn to September 27, 1973, filed September 28, 1973, in opposition to said motion.
5. Notice of motion of Hartford Fire Insurance Company dated October 1, 1973, filed October 4, 1973, for order impleading other parties.
6. Notice of motion by Attorney General of the State of New York to intervene on behalf of State Tax Commission and State Labor Department, dated October 3, 1973, filed October 4, 1973.
7. Notice of motion by Henkin & Henkin dated October 11, 1973, filed October 12, 1973, for leave to intervene (attached to this motion is Henkin & Henkin's answer to the petition).
8. United States of America petition for removal of action from State Court to this Court, filed August 15, 1973.
9. Answer and cross-claim of United States filed September 17, 1973.
10. Answer and counterclaim of Hartford Fire Insurance Company, filed October 4, 1973.
11. Reply of PPG Industries, Inc. to Henkin & Henkin, filed October 24, 1973.
12. United States of America motion for summary judgment, filed March 12, 1974.
13. PPG motion for summary judgment dated March 18, 1974 (not yet filed).
14. Hartford Fire Insurance Company motion for summary judgment dated March 21, 1974 (not yet filed).
15. Henkin & Henkin motion for summary judgment dated March 22, 1974 (not yet filed).
16. Stipulation of facts dated February 20, 1974, not yet filed.
17. Memo of law in support of Government's motion for summary judgment filed March 12, 1974.
18. Memo of law on behalf of PPG Industries, Inc. in support of its position; undated and not yet filed.

100098

19. Henkin & Henkin's memo of law in support of their position, undated and not yet filed.
20. Copy of Judge Frankel's memorandum of referral dated November 14, 1973.

Dated: New York, N.Y.
July 25, 1974.

Respectfully submitted,



HAROLD J. RABY
UNITED STATES MAGISTRATE

cc: T. Gorman Reilly, Esq.
Assistant United States Attorney
Southern District of New York
U.S. Courthouse
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Attorney General of the State of New York
2 World Trade Center
New York, N.Y. 10007
Attention: David H. Berman, Esq.
Assistant Attorney General

AC00099

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
BPC INDUSTRIES, INC. :

Plaintiff, :

-against- :

THE HARTFORD FIRE INSURANCE COMPANY, : 73 Civ. 3556
and UNITED STATES OF AMERICA, : MEMORANDUM
:

Defendants.
----- X

FRANKEL, D.J.

The following motions are now pending in
this action:

1. Motion of Henkin and Henkin dated 9/19/73, for an order directing payment of their legal fees from the fund now held by defendant Hartford Fire Insurance Company.
2. Motion of Hartford Fire Insurance Company dated October 1, 1973, for an order impleading Car Color, Inc., Henkin and Henkin, and the State of New York as party defendants having an interest in the fund.
3. Motion of the New York State Tax Commission dated October 3, 1973, for an order allowing it to intervene to assert a claim to the fund.
4. Motion of Henkin and Henkin dated October 10, 1973, for an order

APPENDIX A

A00100

allowing them to intervene to assert
a claim to the fund.

These motions are hereby referred to the
Honorable Harold J. Ruby, United States Magistrate,
to hear and report.

It is so ordered.

MARVIN E. FARMER

Dated, New York, New York
November 14, 1973

U.S.D.J.

Mr. Potter
73-2321

COPY

A00101

OPINION AND ORDER OF THE DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT

APR 11 1 27 PM '74

PPG INDUSTRIES, INC.,

: S.D. OF N.Y.

Plaintiff,

: 73 Civ. 3550
(WCC)

- against -

:

THE HARTFORD FIRE INSURANCE COMPANY,
UNITED STATES OF AMERICA, NEW YORK STATE
TAX COMMISSION, STATE OF NEW YORK, CAR
COLOR, INC. and HENKIN & HENKIN, ESQS.,

: OPINION
AND
ORDER

Defendants.

: #41422

----- X

CONNER, D. J.:

This proceeding was initiated to resolve conflicting claims to insurance proceeds in the amount of \$7,354.29, plus interest from April, 1972, now held by The Hartford Fire Insurance Company ("Hartford") as a stakeholder. PPG Industries, Inc. ("PPG") originally commenced this action in the New York State Supreme Court, New York County, to obtain the fund as a secured creditor of Car Color, Inc. ("Car Color"), the insured. Subsequently, the United States of America intervened as a tax creditor and the action was removed to this Court, pursuant to 28 U.S.C. § 1441, 28 U.S.C. § 1340 and 26 U.S.C. § 7402.

Presently before the Court is an application by the United States of America for an order setting aside that portion of a Report issued by Magistrate Harold J. Raby on

A00102

July 25, 1974, which held the Government's tax liens against Car Color to be subordinate to the claim of PPG.

I.

To render understandable the nature of the claims asserted, it is necessary to describe briefly the events which preceded the filing of the action.

In October, 1970, Car Color entered into a Security Agreement with PPG whereby PPG obtained a security interest in all of the equipment of Car Color, as well as its inventory and any future proceeds of the inventory. In addition, Car Color agreed to insure the equipment and inventory for the benefit of PPG. The agreement further provided that Car Color would assign the right to receive the proceeds of the insurance to PPG and direct the insurer to pay such proceeds to PPG.

The Security Agreement was duly filed with the Secretary of State, and the County Clerk, Westchester County, in accordance with the provisions of the New York Uniform Commercial Code ("UCC").

On December 10, 1971 and March 27, 1972, the Internal Revenue Service assessed taxes against Car Color totaling

A00103

\$2,078.10, but neglected to file notices of these tax liens until May 4, 1972. Prior to this filing, on December 23, 1971, a fire destroyed the premises of Car Color and it ceased doing business.

Thereafter, PPG commenced an action against Car Color in the New York Supreme Court, New York County, for goods sold and delivered. A default judgment was entered on April 14, 1972 in the sum of \$12,300.90. That judgment is still unsatisfied.

On November 29, 1972, Car Color commenced an action in the New York Supreme Court, Westchester County, against Hartford to recover the proceeds of the fire insurance policy it obtained pursuant to the Security Agreement. That action was removed to this Court, and resulted in a verdict and judgment on April 24, 1973, in favor of Car Color for \$7,354.29 with 6% interest from April 3, 1972. 73 Civ. 157. To date, the attorneys who represented Car Color in that proceeding have not received their fee.

In May, 1973, the New York State Department of Labor filed claims against Car Color for unemployment insurance taxes; and in July, 1973 the State of New York filed tax liens for sales and withholding taxes.

A00104

The competing claims presented to Magistrate

Raby were:

United States	\$ 2,078.10
PPG	12,300.90
Henkin & Henkin, Esqs.	2,451.53
New York State Tax Commission	7,933.03
The Hartford Fire Ins. Co. Attorney's Fees	500.00 ^{1/}

In an extremely thorough Report, Magistrate Raby determined that the fund should be distributed as follows:

Henkin & Henkin, Esqs. (first priority)	\$ 2,654.25
The Hartford Fire Ins. Co. Attorney's Fees (second priority)	500.00
PPG (third priority)	4,200.04
United States (fourth priority)	-0-
New York State (fifth priority)	-0-

A00105

II.

The Magistrate concluded that when the fire occurred, PPG had a legal right to the proceeds of the insurance policy, and therefore ruled that: a) although the assignment to PPG was initially equitable, it became a legal and "choate" assignment when the fire occurred; and b) an assignment or pledge of an owner's rights under a fire insurance policy as collateral security for an indebtedness is valid.

The Government now asserts that the Magistrate erred and that PPG's lien cannot take priority over its lien because PPG had not perfected a security interest within the meaning of Section 6323 of the Internal Revenue Code before the filing of the Government's tax lien.

The Government does not contest the validity of PPG's security interest in the secured property, but claims that:

"the assignment of fire insurance proceeds -- the fulfillment of which depends upon a subsequent fire, the determination of loss, and the insurance company's fixed obligation to pay -- is the assignment of a future right which does not grant to the assignee priority over lienors who have attached before the insurance proceeds come into existence."

Thus, the Government does not contest the priorities assigned to Henkin & Henkin, Esqs. and Hartford, but seeks a redetermination of PPG's third priority designation. It

A00106

asserts that the fund should be divided as follows:

Henkin & Henkin, Esqs.	\$ 2,654.25
The Hartford Fire Ins. Co.	500.00
United States	2,078.10
PPG	2,121.94

PPG, on the other hand, bases its claim upon the assignment of the proceeds of the fire insurance covering Car Color's inventory. Although PPG now seeks to maintain its priority by reaffirming its position as an assignee, in order for PPG to prevail it must establish that it had a valid security interest.^{2/}

III.

Section 6321 of the Internal Revenue Code provides that if a person neglects or refuses to pay any federal tax, a lien arises automatically in favor of the United States, upon all property and rights to property belonging to such person. Section 6322 provides that this lien arises on the date of assessment. Therefore, even though a taxpayer may purport to transfer an interest in his property to a third person, the rights of the transferee will be subject to the tax lien except to the extent that on the date of assessment, the transfer is "choate." United States v. City of New Britain, 347 U.S. 81, 84 (1954). In order for a competing lien to be "choate," the amount of the lien, the property subject to the lien and the identity of the lienor must be certain. Id.

A00107

There are, however, exceptions to the rule.

Section 6323(a) provides that:

"The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof . . . has been filed"

Thus, if PPG qualifies as the holder of a security interest, the date by which its interest must have been "choate" is May 4, 1972.

To qualify as the holder of a security interest, PPG must come within the definitional requirements of Section 6323(h). That section provides that:

"The term 'security interest' means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth."

The ultimate issue whether PPG holds a security interest entitled to priority over the Government's tax liens is a Federal question. See Aquilino v. United States, 363 U.S. 509, 513-14 (1960); United States v. Acri, 348 U.S. 211, 213 (1955); United States v. Security Trust & Savings Bank, 340 U.S. 47, 49 (1950); Dugan v. Missouri Neon & Plastic

Advertising Co., 472 F.2d 944, 949 (8th Cir. 1973); Texas Oil & Gas Corp. v. United States, 466 F.2d 1040, 1049-50 (5th Cir. 1972), cert. denied, 410 U.S. 929 (1973). However, to resolve that question, it is necessary to look to the law of New York to determine the nature of PPG's interest in the insurance proceeds. Aquilino v. United States, supra at 512-13; Dugan v. Missouri Neon & Plastic Advertising Co., supra.

A review of the New York law compels this Court respectfully to disagree with the Magistrate's conclusion that PPG had an equitable assignment of the insurance proceeds which "became a full-fledged legal and 'choate' assignment immediately upon the happening of the fire." The law in New York is well settled that an assignment of a future interest in the proceeds of a claim is equitable only, and does not become a legal assignment until the proceeds have come into existence. Harold Moorstein & Co. v. Excelsior Insurance Co., 306 N.Y.S.2d 464, 465 (N.Y.C.A. 1969). In other words, an equitable assignment becomes a legal assignment when there is a judgment or appropriation of the proceeds in favor of the assignor. City of Utica v. Gold Medal Packing Corp., 283 N.Y.S.2d 611, 614 (Sup.Ct. Oneida Cty. 1967), citing, Fairbanks v. Sargent, 117 N.Y. 320, 336-37 (1889); In re Modell, 71 F.2d 148 (2d Cir. 1934), and others; Bernstein v. Allstate Insurance Co., 288 N.Y.S.2d 646, 648 (Civ. Ct. N.Y. Cty. 1968). Moreover, the ripening of an equitable lien into a legal lien does not relate back to the

A00109

date of the execution of the original instrument. Cordaro v. Cordaro, 235 N.Y.S.2d 289, 290 (4th Dept. 1962), aff'd, 241 N.Y.S.2d 175 (N.Y.C.A. 1963); City of New York v. Bedford Bar & Grill, Inc., 161 N.Y.S.2d 67 (N.Y.C.A. 1957), Matter of Gruner, 295 N.Y. 510 (1946); City of Utica v. Gold Medal Packing Corp., supra at 614.

However, this is not dispositive of the matter. It is beyond dispute that PPG entered into the Security Agreement for the purpose of "securing payment or performance" of an outstanding debt and to insure "against loss or liability." 26 U.S.C. § 6323(h). Furthermore, it is clear that its interest in the inventory was "choate" by the time the Government's notice was filed in May, 1974. See Coogan, Hogan & Vagts, Secured Transactions under the U.C.C. § 12.08[2] at 1276 (Bender's Uniform Commercial Code Service 1973). The identity of the lienor, and the property subject to the lien were known by October, 1970; and, by April, 1972 there was a judgment in favor of PPG against Car Color for \$12,300.90.^{3/}

Thus, PPG's lien is entitled to the priority accorded it by the Magistrate if, under New York law, its security interest in the insured property was transferred to the insurance proceeds when the property was destroyed by fire.

The Government asserts that although PPG had a security interest in the secured property, it could not have

A00110

a security interest in the proceeds of the insurance covering that property because Section 9-104(g) of the New York Uniform Commercial Code provides that Article 9 does not apply to a claim in or under any policy of insurance. Thus, insurance proceeds do not constitute the type of proceeds of collateral in which a security interest continues, provided the interest in the original collateral had been perfected.^{4/} N.Y. Uniform Commercial Code § 9-306(3) (McKinney 1964).

In support of that argument, the Government cites Quigly v. Caron, 247 A.2d 94 (Me. 1968), and Universal C.I.T. Credit Corp. v. Prudential Investment Corp., 222 A.2d 571 (R.I. 1966)^{5/}, which specifically ruled that insurance proceeds do not come within the meaning of "proceeds" under Section 9-306(1). See also National Bedding & Furniture Industries, Inc. v. Clark, 481 S.W.2d 690, 691 (Ark. 1972).

In Quigly, supra, the Court found that the phrase "or otherwise disposed of" means "voluntary disposal and not a change from destruction by fire." 247 A.2d at 96. In Universal C.I.T., supra at 574, the Court found that the "proceeds" which the section refers to must arise from either a sale, exchange, collection or other disposition of either the collateral or proceeds, and that insurance proceeds arise and are paid only as a result of a personal contract,

A00111

which does not attach to or run with the property.

This Court, however, is constrained respectfully to disagree with the interpretation of Section 9-306 adopted in Quigly and Universal C.I.T. In 1972, Section 9-306(1) was amended to provide specifically that "insurance payable by reason of loss or damage to the collateral is proceeds

. The official comment on this amendment states:

"The new sentence of subsection (1) is intended to overrule various cases to the effect that proceeds of insurance on collateral are not proceeds of the collateral."

Moreover, the Court in Universal C.I.T. nullified the express intent of parties who had attempted to effectuate an absolute and indefeasible interest in the collateral securing the debt. In the instant case, Car Color did not obligate itself to obtain insurance for its own benefit, but as further security for the benefit of PPG. The parties clearly intended that PPG should be protected not only against dissipation of the collateral by sale or other disposition, but from the possibility that its security interest might be obliterated or reduced through destruction or damage of the property by fire.

Although New York has not yet adopted the amendment to Section 9-306(1), this Court is not convinced that the New York state courts would follow the interpretation of

Section 9-306(1) advanced by the Courts in Quigly and Universal C.I.T. See 1 Coogan, Hogan & Vagts, supra § 3A.03[c].

We have been able to find only two prior New York decisions involving similar facts. One is Judge Bonsal's unreported decision in Federal Insurance Co. v. Billy's Burgers, 72 Civ. 1098 (S.D.N.Y. Feb.16, 1973). There the indebtedness of Billy's Burgers to Kent Store Fixtures, Inc. ("Kent"), was secured by a security agreement which was properly filed on February 17, 1970. By the agreement, the debtor assigned to the creditor "all sums which may become payable" under the insurance policy which Billy's Burgers was to obtain as "additional security for the indebtedness."

On August 11, 1971 and March 28, 1972, the Government made tax assessments against Billy's Burgers. Notices were filed August 23, 1971 and April 10, 1972.

The Court ruled that despite the fact that Kent's security agreement was perfected under the UCC, under Section 6323 the property must be in existence for a security interest to attach and that the insurance proceeds were not in existence until February 29, 1972 when the insurance company admitted that it owed the money. Thus, the Government's lien from the August 11, 1972 assessment was given priority over Kent's claim, which in turn was given priority over the March 28, 1972 assessment.

A00113

The instant case cannot be distinguished factually from Billy's Burgers. However, with all respect, this Court cannot agree with the result reached there.

Although the Court in Billy's Burgers discussed the issue of security interest in the insurance proceeds only very briefly, as one of a large number of other priority claims, the underlying rationale of its decision on that issue appears closely to parallel that in Quigly and Universal C.I.T. None of these opinions convincingly answers, or even discusses, the argument that the property which was the subject matter of the security agreement (here, the inventory), was clearly in existence, and that the proceeds of the insurance are merely the collateral in another form. See 1 Coogan, Hogan & Vagts, supra § 3A.03[c].

The other relevant case, Andrello v. Nationwide Mutual Fire Insurance Co., 289 N.Y.S.2d 293 (4th Dept. 1968), took a different route to the opposite result.

In Andrello, the debtor, Andrello, executed and delivered a second mortgage to Hoerle and Kowalsky on certain realty which he owned in order to secure payment of the debt. The instrument recited that the owner of the property (Andrello) covenanted to keep the buildings insured against loss by fire for the benefit of Hoerle and Kowalsky and would assign and deliver the policies to them.

A00114

On April 7, 1964 Andreello obtained insurance on the property but did not make the proceeds payable to Hoerle and Kowalsky. On various dates from February 26, 1964 through March 2, 1964 the United States filed tax liens against Andreello for unpaid federal taxes. The liens, however, were improperly filed. Finally, on August 11, 1964 a building on the premises was destroyed by fire.

The trial court, basing its decision upon an interpretation of 26 U.S.C. § 6323 as amended in 1966, found Hoerle and Kowalsky to be "the holder(s) of a security interest" within the meaning of that section.

The Appellate Division affirmed the lower court's decision and agreed "in general with the trial court's analysis of the nature of (the) claim." 289 N.Y.S.2d at 297.

The Appellate Division ruled, however, that the claim, instead of being considered under the amended Section 6323, should have been considered under that section as it existed prior to the amendment, when it protected "mortgagee(s) (and) pledgee(s) . . . " against unfiled tax liens.

The Court went on to find Hoerle and Kowalsky to be pledgees ("a pledge is a security interest in a chattel or an intangible . . . created . . . for the purpose of securing the payment of a debt . . . " Restatement, Security, § 1; 289 N.Y.S.2d at 298), and concluded that since the purpose of

A00115

the clause was to provide security in the event of fire, the pledgees, Hoerle and Kowalsky, could hold the insurance proceeds as collateral in lieu of the property itself. 289 N.Y.S.2d 298.

The facts of Andrello are clearly similar to those in the case at bar. In both cases, there was a prior security agreement purporting to include as part of the collateral the proceeds of the insurance required to be obtained on the secured property. Although the rights of the claimants in Andrello were analyzed in the terms of Section 6323 as it existed before the 1966 amendment, it appears that the same result would have been reached under the new language, because the Court expressly stated that "a pledge is a security interest."⁶

Thus the final result in Andrello, if not clearly binding here, is at least strongly persuasive, particularly since it effectuated, in a reasonable manner, the clear intent of the parties.

The Congressional purpose of the 1966 amendment to Section 6323 was "in part an attempt to conform the lien provisions of the internal revenue laws to the concepts developed in the Uniform Commercial Code." 1966 U.S. Code Cong. and Admin. News 3722. The official comment to Section 9-101 states that:

A00116

"The aim of this Article is to provide a simple and unified structure within which the immense variety of present-day secured financing transactions can go forward with less cost and greater certainty."

Moreover, the Article applies to any transaction intended to create a security interest in personal property. UCC § 9-102. The Article further attempts to provide a "method of safeguarding the interest of a creditor secured by personal property which remains in the hands of the debtor." Anderson, Uniform Commercial Code, § 9-101:3 at 5 (2d ed. 1971).

It is beyond doubt that PPG had a security interest in Car Color's inventory and that the parties intended the proceeds of the insurance on that collateral to be further security for the loan.^{7/} Thus, in view of the policy considerations behind Article 9, as well as the policy of 26 U.S.C. § 6323 to give preference to security interests as defined by that provision, we are impelled to the conclusion that PPG had a security interest in the proceeds of the insurance which takes precedence over the Government's lien.

The motion of the United States is therefore denied, and the distribution determined by Magistrate Raby is affirmed.

SO ORDERED.

WILLIAM C. CONNER

United States District Judge

Dated: New York, New York
November 7, 1974

A00117

FOOTNOTES

1. This sum is the Magistrate's estimate for reimbursement of reasonable attorney's fees incurred by Hartford in its capacity as stakeholder.
2. In this regard PPG claims that it intended that its debt be completely secured by the inventory, and that it accomplished this by the filing of the Security Agreement. Thus, PPG claims that the only way to respect the intent of the parties to the agreement is to allow PPG to reach the insurance proceeds.
3. The Government does not contest that PPG's security interest in the inventory, under New York law, was perfected before the tax liens were filed.
4. Under Section 9-306(2) of the UCC:
"a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor . . . and also continues in any identifiable proceeds including collections received by the debtor."

Section 9-306(1) provides that:

"'[p]roceeds' includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of."

5. The Government has also cited *Rath v. Aerovias Interamericanas De Panama*, 127 N.Y.S.231, 237 (Sup.Ct.N.Y.Cty. 1953), for the proposition that where an owner of property has agreed to insure for the benefit of a creditor, but procures insurance payable to himself alone, "the creditor has an equitable lien on the proceeds." In addition to the language in *Rath* merely being dicta, that case was decided long prior to the adoption of the UCC which expresses a clear intent to protect all transactions which attempt to effect a security interest, 9-102(1), in view of the growing use and complexity of financial arrangements. See 1 Coogan, Hogan & Vagts, *Secured Transactions under the U.C.C.*, § 1.01[3] (Bender's Uniform Commercial Code Service 1973).

A00118

The Government's reference to Harold Moorstein & Co. v. Excelsior Insurance Co., 296 N.Y.S.2d 2 (1st Dept. 1968), aff'd 306 N.Y.S.2d 464 (N.Y.C.A. 1969) is likewise misplaced. That case involved the assignment of proceeds of an insurance policy from a fire which had already occurred. The Court, therefore, was not concerned with the policy considerations behind protecting security interests. See infra pages 15, 16.

6. See Creedon, The Federal Tax Lien Act of 1966 - An Historic Breakthrough, 4 Harv. J. Legis. 163, 168 (1967):

"Whereas previously section 6323(a) protected 'any mortgagees and pledgees,' the new act substitutes the concept of the holder of a security interest,' which is borrowed from the Uniform Commercial Code."

7. Community National Bank & Trust Co. v. Long Island Insurance Co. (Sup.Ct. Rich. Cty.) N.Y.L.J., April 20, 1972 at 20 Col. VII; see Andrello v. Nationwide Mutual Fire Insurance Co., 289 N.Y.S.2d 293, 298 (4th Dept. 1968).

000119
PETITION FOR REMOVAL IN CAR COLOR, INC. V.
HARTFORD FIRE INSURANCE COMPANY,
73 CIV. 157 (MP)

73 CIV. 157

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE POLLACK

-----X
CAR COLOR, INC.

Plaintiff

-against-

PETITION FOR REMOVAL

HARTFORD FIRE INSURANCE COMPANY

Defendant
-----X

TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK:

The petition of the Hartford Fire Insurance
Company respectfully alleges:

1. On November 29, 1972 as deponent is informed
and verily believes, an action was commenced against petitioner
in the Supreme Court of the State of New York, and for the
County of Westchester, entitled: Car Color, Inc. plaintiff
against Hartford Fire Insurance Company defendant by service
upon the defendant of a summons, a copy of which is herein
annexed. A complaint was served on December 26, 1972. A
copy of this complaint is also herein annexed.

2. The complaint herein constitutes the initial
pleadings setting forth the claim for relief upon which the
action is based and not more than 30 days have elapsed since
the receipt by petitioner of a copy thereof.

3. The above described action is one of which
this court has original jurisdiction under the provisions of
Title 28 U.S.C., section 1332, and is one which may be
removed to this court by the petitioner, defendant herein,
pursuant to Title 28 U.S.C., section 1441, in that it is a
Civil action wherein the matter in controversy exceeds the

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
JAN 9 2 32 PM '73

sum or value of \$10,000 exclusive of the interests and costs, and is between citizens of different states.

4. The plaintiff Car Color, Inc. at the time that this action was commenced was and still is a citizen of the State of New York, being a New York domestic corporation authorized to do business in the State of New York. Hartford Fire Insurance Company, defendant, at the time this action was commenced, was and still is a foreign corporation incorporated under the laws of the State of Connecticut, with its principal place of business in Hartford, Connecticut, and was not, and is not, a citizen of the State of New York wherein this action was brought.

5. Petitioner filed herein a bond with good and sufficient surety conditioned, as provided by Title 28 U.S.C., section 1446(d), that it will pay all costs and disbursements incurred by reason of the removal proceedings herein brought should it be determined that this action is not removable or is improperly removed.

WHEREFORE, petitioner prays that the above action now pending against it in the Supreme Court of the State of New York, in and for the County of Westchester, be removed therefrom to this court.

Dated: New York, N.Y.
January 24, 1973.

GREENHILL & SPEYER
Attorneys for Defendant

By: 

A Member of the Firm
Office & P. O. Address
56 Pine Street
New York, N.Y. 10005
(212) 943-1550

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

CAR COLOR, INC.,

Plaintiff,

-against-

VERIFICATION

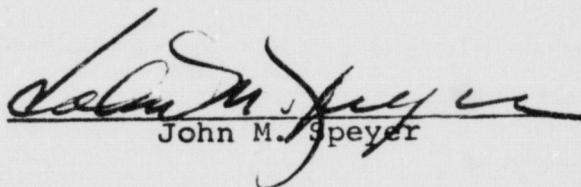
HARTFORD FIRE INSURANCE COMPANY,

Defendant.

-----X

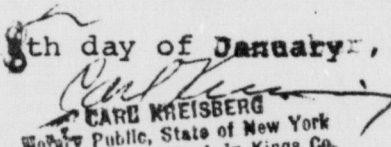
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOHN M. SPEYER, being duly sworn, deposes and says that he is a member of the firm of Greenhill & Speyer, the attorneys for the petitioner, Hartford Fire Insurance Company. That he has read the foregoing petition and knows the contents thereof, and the same is true to his knowledge, except as to the matters alleged therein to be stated upon information and belief, and as to those matters he believes them to be true; that the sources of the deponent's information and the grounds of his belief as to all matters in the foregoing petition not therein stated upon his knowledge are the documents annexed to the foregoing petition and information disclosed in records and documents in the possession of the petitioner herein.


John M. Speyer

Sworn to before me this

8th day of January, 1973


CARL KHEISBERG
Notary Public, State of New York
No. 24-2199535 Qual. in Kings Co.
Certificate Filed in New York County
Commission Expires March 30, 1973

AC00122

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

CAR COLOR, INC.,

Plaintiff

-against-

AFFIDAVIT

HARTFORD FIRE INSURANCE COMPANY,

Defendant.

-----x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

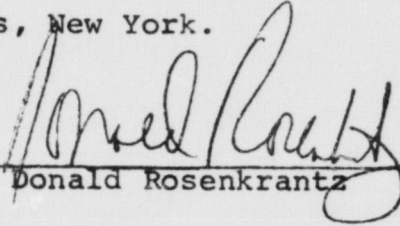
DONALD ROSENKRANTZ, being duly sworn, deposes and
says:

I am an attorney at law associated with Greenhill
& Speyer, Esqs., attorneys for the defendant herein.

On January 8th, 1973 I served a copy of the
attached notice of filing petition for removal, together
with copies of petition and undertaking upon Henkin and
Henkin, Esqs., attorneys for the plaintiff, by enclosing
same in a postpaid envelope at the said attorneys' address,
22 West First Street, Mount Vernon, New York 10550, and
deposited same in the post office receptacle at 56 Pine
Street, New York, New York 10005.

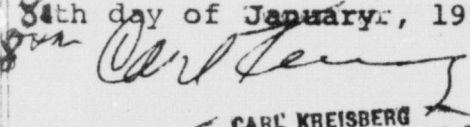
A00123

On January 8th, 1973, I also delivered copies of all the aforesaid papers, namely, notice of filing petition for removal together with a petition and undertaking upon the Clerk of the Supreme Court, State of New York, County of Westchester, by delivering all said papers to the County Clerk, 166 Main Street, White Plains, New York.


Donald Rosenkrantz

Sworn to before me this

8th day of January, 1973.


CARL KREISBERG
Notary Public, State of New York
No. 24-2199535 Qual. in Kings Co.
Certificate Filed in New York County
Commission Expires March 30, 1973

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

CAR COLOR, INC.

Plaintiff

against

HARTFORD FIRE INSURANCE COMPANY

Defendant

Index No.

Plaintiff designates
Westchester
County as the place of trial

The basis of the venue is
residence of plaintiff.

Summons with Notice

Plaintiff resides at
910 Neperhan Avenue
Yonkers, New York
County of Westchester

To the above named Defendant

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated. November 14, 1972

Defendant's address:

123 William Street, New York, N.Y.

Notice: The object of this action is to recover for failure to make payment for damages covered by insurance contract. The relief sought is compensation for damages suffered from fire loss.

Upon your failure to appear, judgment will be taken against you by default for the sum of \$ 22,549.75 with interest from December 23, 1971 and the costs of this action.

HENKIN and HENKIN
Attorney(s) for Plaintiff
Office and Post Office Address
22 West First Street
Mount Vernon, N.Y.

(914) 668-2300

MR. QUINN

A00125

SUPREME COURT : WESTCHESTER COUNTY

Index No.

RECEIVED

CAR COLOR, INC.

DEC 26 1972

Plaintiff

GREENHILL & SPEYER

-against-

VERIFIED COMPLAINT

HARTFORD FIRE INSURANCE COMPANY

Defendant

Plaintiff, complaining of the defendant, by

HENKIN and HENKIN, his attorneys, alleges:

1. Upon information and belief, at all times hereinafter mentioned, the defendant was and still is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut and duly authorized to carry on the business of issuing fire insurance in the State of New York.

2. Plaintiff is a domestic corporation, duly authorized to do business in the State of New York.

3. At all times hereinafter mentioned, the plaintiff was the lessee of certain property in the City of Yonkers, New York, at 910 Nepperhan Avenue.

4. On or about the 11th day of December, 1970, the defendant herein duly issued and delivered to the plaintiff at 910 Nepperhan Avenue, in the City of Yonkers, New York its policy of insurance No. 12FS364693, being a standard form of fire insurance policy wherein and whereby the defendant, in consideration of the sum of Three Hundred Sixty-Nine (\$369.)

A00126

Dollars payable in three (3) annual installments of One Hundred Twenty-three (\$123.) Dollars, premium paid by the plaintiff to the defendant, did insure said plaintiff against loss or damage by fire in the amount not exceeding Twenty-five Thousand (\$25,000.) Dollars for the term of three (3) years, from the 10th day of December, 1970, as follows:

a. "On contents visual and incidental to retail and wholesale sale of paint in cans situated in fire resistive mercantile building located at: 910 Nepperhan Avenue, Yonkers, New York (rated from Roberts Ave. to the south and west side, Tariff No. AS422600)";

b. The sum of Twenty-five Thousand (\$25,000.) Dollars for fire, lightning, exterior coverage, vandalism and malicious mischief on said premises.

5. Defendant in and by said policy of insurance did promise and agree to make good unto the plaintiff for such loss and damage, not exceeding in amount the sum insured, as aforesaid, as should happen by fire as therein and herein specified, during the term of three (3) years from the 10th day of January, 1970 to the 10th day of January, 1973, such loss to be paid within sixty (60) days after notice and proof of loss should be furnished to the defendant.

6. On or about the 23rd day of December, 1971 and while said policy of insurance was in full force and effect, most of the contents of said premises were duly destroyed by said fire. Said fire did not occur by any of the causes ex-

excepted by said policy.

7. The true and accurate value of the contents so insured and destroyed at the time of the said fire aforesaid was the sum of Twenty-two Thousand Five Hundred Forty-nine and 75/100 (\$22,549.75) Dollars.

8. At the time said policy of insurance was issued as aforesaid and up to and including the time of such fire, the plaintiff was the true and lawful owner of the aforesaid contents.

9. There was no other such insurance upon said property or any portion thereof at the time of such obstruction.

10. Heretofore and on or about the 24th day of December, 1971, due notice was given to the defendant of said fire and said loss; on or about the 28th day of March, 1972, defendant demanded that plaintiff furnish the defendant with a proof of loss; on or about the 6th day of April, 1972, the plaintiff delivered to the defendant due notice of proof of said loss as aforesaid, in accordance with the terms and conditions of said policy, and the plaintiff has fully and duly performed all the conditions of said policy on its part to be performed.

11. Said proof of loss set forth a compromise figure of Seven Thousand Three Hundred Fifty (\$7,350.) Dollars in anticipation of prompt payment by the defendant thereof; since the defendant has refused to honor said proof of loss, the plaintiff repudiates the said compromise figure and demands the

A00128

the recovery of the value of the full loss suffered.

12. More than sixty (60) days have elapsed since the delivery to the defendant of said proof of loss and demand has been made upon the defendant for the sum of Twenty-two Thousand, Five Hundred Forty-nine and 75/100 (\$22,549.75) Dollars for such loss as aforesaid.

13. This action was commenced within twelve (12) months from the time of said fire.

14. Defendant has paid to plaintiff no part of said sum of Twenty-two Thousand Five Hundred Forty-nine and 75/100 (\$22,549.75) Dollars.

WHEREFORE, plaintiff demands judgment against defendant in the sum of Twenty-two Thousand Five Hundred Forty-nine and 75/100 (\$22,549.75) Dollars with interest from December 23, 1971, together with the costs and disbursements of this action.

Dated: December 21, 1972

HENKIN and HENKIN
Attorneys for Plaintiff
Office & P.O. Address
22 West First Street
Mount Vernon, N.Y. 10550
(914) 668-2300

FINDING OF FACTS AND CONCLUSION OF LAW IN CAR COLOR, INC. v.
HARTFORD FIRE INSURANCE COMPANY, 73 CIV. 157 (MP)

CAR COLOR, INC.,

vs.

73 Civ. 157

HARTFORD FIRE INSURANCE COMPANY

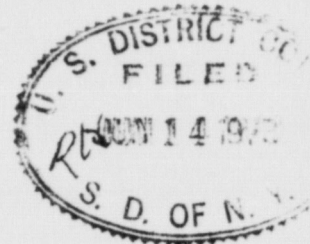
New York, New York

April 24, 1973.

Room 519

BEFORE:

HON. MILTON POLLACK,
District Judge.



THE COURT: I have been following this case in precise detail and have made examinations of the law both prior to and during the course of the trial, and have made a thorough examination of the documents that bear pertinently on the issue to be decided.

This is an action on a fire insurance policy issued by the defendant to the plaintiff, covering the contents of the plaintiff's retail and wholesale paint store located at 910 Nepperhan Avenue, Yonkers, New York.

The policy was issued by the defendant to plaintiff for an amount not exceeding \$25,000 and for a three year period commencing December 10, 1970.

This is a removed action from the Supreme Court of the State of New York, Westchester County, and seeks to

1 JH:ar 2

2 recover under the aforesaid insurance policy an amount of
3 \$22,549.75, together with appropriate interest.

4 The coverage of the policy included the contents
5 usual for a retail paint and body supply shop, consisting of
6 automobile body paints, tool and paint supplies located in
7 the premises, which was a two-story brick and mercantile
8 building in Yonkers, New York.

9 On December 23rd, 1971, at 2:21 a.m., a fire
10 occurred in the premises. The fire was extinguished within
11 a reasonably short time, between 15 and 30 minutes, by the
12 internal sprinkler system. The contents and merchandise
13 came in contact with water and with smoke, and substantial
14 fire damage to the property was sustained.

15 The fire which broke out in the premises was pre-
16 sumably due to accumulated fumes from paint and filling
17 materials causing an explosion and flash fire which enveloped
18 the entire salesroom area and resulting in twelve sprinkler
19 heads flooding the area.

20 The defendant's representative, Mr. Lawton, in-
21 spected the premises on December 27th, 1971, and noted at
22 that time that a considerable number of cans of paint on
23 various shelves had been set afire and exploded, spilling
24 their contents over portions of the stock. The balance of
25 the stock had received extremely heavy water damage and heat.

JH:ar 3

Approximately a foot of water was on the premises upon the arrival of the firemen and a wall between the insured's premises and an auto body shop next door was broken out.

On preliminary inspection the defendant's representative suggested that his company set up a reserve of \$20,000 temporarily. This reserve has no significance other than being the evaluation of the representative, an accredited expert in the handling of fire loss claims.

The defendant's representative then met with the insured's representative at the scene of the loss and received from the insured's representative a detailed inventory of the destroyed and damaged items prepared by the plaintiff's public adjuster. This inventory was then discussed in detail with the defendant's adjuster, Mr. Lawton, and the valuation of the items set forth thereon, which were covered by invoices present at the discussion between the two men and which the plaintiff ascribed to the loss suffered, was considered item by item and verified by the invoices on a test check basis. Furniture and fixtures were appraised as to value and loss by the two adjusters, both of whom carry high experience.

The agreed value and claim thus established between these representatives of the parties was fixed at \$7,354.29. During the course of the trial the defendant admitted on the record that there was a loss to this plaintiff

1 JH:ar 4

2 from this fire of \$7,350.

3 The plaintiff claims that this was a compromise
4 figure for the purposes of prompt adjustment, but the evidence
5 indicates very clearly that this amount represents the
6 credible loss to the plaintiff.

7 However, the defendant's representative did not
8 agree at that time to accept a proof of loss for filing with
9 the company inasmuch as the claim of the plaintiff was then
10 about to be investigated or was being investigated by the
11 local police, the district attorney and the defendant's
12 private fire investigator. The defendant's adjuster reported
13 to his company that upon completion of those investigations,
14 if he found the insured to be completely free of fault, he
15 would proceed to conclude the loss with the plaintiff's public
16 adjuster.

17 Ultimately, the plaintiff's public adjuster pro-
18 ceeded by preparing the form of proof of loss in the ordinary,
19 usual and accepted form, accepted by insurance companies, and
20 by this defendant and its representative, filling in thereon
21 a claim in the amount which the adjusters had agreed upon was
22 the value of the loss. This was duly signed and forwarded to
23 the defendant by its representatives and is sufficient for
24 all purposes of this suit as a proof of loss under the facts
25 and circumstances. A copy of the detailed inventory of items

JH:ar 5

involved in the loss, showing the purchase values and the cash values thereof, as well as the agreed amounts of loss thereon as agreed between the two experts in going over the items item by item and lot by lot, accompanied the formal proof of loss.

The credible evidence established that the plaintiff reasonably and sufficiently complied with all terms and conditions of the insurance policy required of it in presenting a claim thereunder.

The plaintiff thereafter complied with the defendant's demand to submit to examination under oath. The representative of the plaintiff, examined by the defendant's attorney, made it perfectly plain that he was the inactive "partner" of the enterprise and his responses on the preliminary examination were made according to his estimates, impressions, beliefs and information in good faith, and supplied to him by others without any actual personal knowledge.

Defendant's inquiries persisted, nonetheless, as though the witness was a knowledgeable person: possibly these were intended to develop representations on material matters which might deviate from the fact and thus to allow defendant to seek to establish a form of deceit.

Suffice to say that the credible evidence and the

JH:ar 6

proper inferences to be drawn in the circumstances fail to reveal any knowing or wilful falsity on material matters and there was an absence of intent to deceive the insurer in fact or by reasonable implication.

It was admitted, as stated previously, on the record by defendant's counsel that the defendant had valued the loss at \$7,350. It is furthermore apparent that there was a loss in that amount.

After a period, during part of which the plaintiff was negotiating payment of its claim with the defendant, the inventory of merchandise was stored and ultimately disposed of as salvage for approximately \$150. The plaintiff took the steps any reasonably prudent businessman would have taken to protect its property and investment pending the disposition of the claim.

The occurrence of arson, for which the plaintiff was responsible according to the defendant, was not proved. There was no proof of any overt act or of intent by the insured or someone acting with its consent and on its behalf, or whose acts are legally binding on it. Suspicion, conjecture and financial circumstances do not fill the gap.

The mere fact that a fire was of incendiary origin is no defense to this suit whatsoever, unless the fire was traceable to the assured. There must be a showing that the

insured was privy to the burning.

While the broadest latitude was permitted to the defendant to develop all of the circumstances allegedly relevant in connection with showing a disposition toward incendiarism, the record is wholly wanting of proof or the requisite elements to sustain such a defense of arson attributable to the plaintiff. The intent required for such a defense is purposely to cause the fire. The insurer bears the burden of proof of arson or incendiarism to be established by a fair preponderance of credible evidence, either direct or circumstantial.

It may be taken that this was an incendiary fire, but there was a total lack of any connection to the incendiarism shown by any credible evidence connecting the plaintiff therewith. The presumption of innocence of the insured continues, ~~since~~ the preponderance of the evidence failed to establish the contrary.

The plaintiff has established its claim herein by a fair preponderance of the credible evidence, to which the defendant has not established its defense of arson or incendiary fire attributable to the plaintiff. The plaintiff is, accordingly, awarded judgment for \$7,354.29, with interest from April 3, 1972 at the legal rates prevailing during the interim to the date of the entry of judgment

JH:ar 7A

A00136

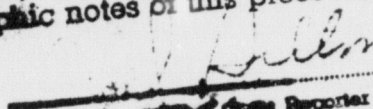
herein, together with a full bill of costs to be taxed by the clerk.

The foregoing shall constitute the findings and conclusions required by Rule 52(a), Federal Rules of Civil Procedure.

So ordered.

- - -

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability from my (our) stenographic notes of this proceeding.


Court Reporter
U.S. District Court

A00137

MEMORANDUM IN FEDERAL INSURANCE COMPANY v.
BILLY'S BURGERS, INC., ET AL., 72 CIV. 1098 (D.B.B.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL INSURANCE COMPANY,

Plaintiff,

-against-

BILLY'S BURGERS, INC.,
MORRIS HAMMERMAN,
KENT STORES PICTURES, INC.,
ROBERT J. MOSES,
INTERNAL REVENUE SERVICE, and
H. S. ABRAMS CO.,

Defendants.

Appearances:

GROSS & HOPE, LOCKWOOD & PENNELLY, ESQS.
55 John St., New York, N.Y. 10038
Attorneys for Plaintiff
By LESTER C. LOCKWOOD

WHEATLEY NORTH SEXTON, JR.,
United States Attorney for the
Southern District of New York
Attorney for Defendant Internal Revenue Service
DAVID P. LAND, Asst. U. S. Attorney
Of Counsel

ROBERT PORT
1396 Fulton St., Brooklyn, N.Y. 11216
Attorney for Defendant Morris Hammerman

SAMUEL J. CORAN
166 Fifth Ave., New York, N.Y. 10010
Attorney for Kent Store Pictures, Inc.

Mr. Kelly
Opinion

39213

Cagey

72 CIV. 1098

FILED
U.S. DISTRICT COURT
FEB 16 2 43 PM '73
S.D.C.F.N.Y.

A00138

MEMORANDUM

BONSAL, D. J.

This is an interpleader action instituted by the plaintiff on February 22, 1972 in the New York State Supreme Court, New York County, which action was removed to this court by defendant Internal Revenue Service ("the Government") on March 15, 1972. The interpleaded fund of \$12,500 ("the Fund") arose in connection with a fire insurance policy of \$25,000 which plaintiff issued to defendant Billy's Burgers, Inc. ("Burgers") on January 2, 1970 which policy covered the business premises of Burgers, a New York corporation, located at 916 Fulton St., Brooklyn, New York, the proceeds being payable solely to Burgers. On or about December 20, 1970, a fire occurred on the business premises of Burgers and, subsequently, the amount of loss was mutually agreed upon by plaintiff and Burgers to be \$12,500, with proof of loss being filed by Burgers with plaintiff in July of 1971. Following this fire, Burgers ceased doing business. The complaint alleges that plaintiff owes the \$12,500 under its insurance contract with Burgers, that the money has not been paid, that five other claimants in addition to Burgers have made demands for payment from the Fund, and that plaintiff is ignorant of the respective rights of each of the claimants. The complaint seeks to interplead the claimants, all of whom are defendants in this action, concerning their re-

A00139

spective claims; to stay a lawsuit commenced by one of the claimants against plaintiff with respect to the Fund pending the outcome of this action; to enjoin the other claimants from commencing suit against plaintiff; to discharge plaintiff from liability on payment into court of the Fund; and to obtain a judgment allowing its costs, legal expenses and disbursements to be paid out of the Fund.

The Claimants to the Fund

In addition to Burgers' and plaintiff's claims for legal fees and expenses, the following have made claims on the Fund:

The claim of N. S. Abrams Co. ("Abrams") of \$1,572.50 arose in connection with services Abrams rendered to Burgers as public adjuster in connection with the loss from the fire. He was to receive as his fee for his services 12 1/2% of the loss as finally adjusted (which amounted to \$1,572.50), and on December 22, 1970 Burgers executed an assignment to Abrams of 12 1/2% "... OF THE AMOUNT OF LOSS AS ADJUSTED, OR OTHERWISE RECOVERED FROM THE COMPANIES."

The claim of the Government for \$8,920.30 plus \$120.20 in interest arose in connection with four tax assessments made against Burgers. Three of these assessments, totalling \$6,393.05, were made on August 11, 1971 for accrued WH and FICA taxes for the tax

A00140

periods ending June 30, 1970, September 30, 1970 and December 31, 1970. The Government filed notices of tax liens arising from these assessments on August 23, 1971 with the Secretary of State, Albany, New York and with the Registrar's office, Kings County, New York. On October 7, 1971, the Government served a notice of levy on plaintiff for \$6,498.61. The fourth assessment^{in the amount of \$1,625.25} was made on March 28, 1972 for accrued FUTA taxes for the tax period ending December 31, 1970, and the Government filed a notice of tax lien arising from this assessment with the Secretary of State, Albany, New York on April 10, 1972.

The claim of Morris Hammerman ("Hammerman") of \$2,177.50 arises from two judgments which he obtained against Burgers in the Civil Court, Kings County, for unpaid rent. The first judgment of \$1,242.50 was obtained on June 7, 1971 and was docketed in the Clerk's office of the Civil Court, Kings County, on the same date. The second judgment of \$935 was obtained on June 21, 1971 and was docketed in the Clerk's office of the Civil Court, Kings County, on the same date. No part of these judgments has been paid.*

* On June 22, 1971, Hammerman served a subpoena on plaintiff restraining it from transferring any assets belonging to Burgers. Thereafter, Hammerman commenced proceedings in the Civil Court, Kings County, seeking a judgment directing plaintiff to pay Hammerman the amount of the judgments against Burgers, and notices of petition with respect to these proceedings were served on plaintiff on or about February 17, 1972.

A00141

The claim of Robert H. Moses ("Moses") of \$9,496 arises in connection with a judgment against Burgers for that amount, a certified copy of which was served on the plaintiff on July 30, 1971. Moses did not serve an answer to the original complaint.

The claim of Kent Store Fixtures, Inc. ("Kent") of \$2,867 arises out of Burgers' purchase from Kent of some restaurant equipment. Burgers' indebtedness was secured by a security agreement dated November 24, 1969, and the appropriate financing statements were filed with the Registrar's office, Kings County, New York on February 17, 1970 and with the Secretary of State, Albany, New York on February 18, 1970. Under the terms of the security agreement, Burgers assigned to Kent "all sums which may become payable" under the insurance policy which Burgers was to obtain to insure the collateral from loss by fire as "additional security for the indebtedness." Kent notified plaintiff of the existence of this security agreement on February 22, 1971, claiming an unpaid balance of \$2,867.00.

The Government's Motion

The Government now moves for summary judgment pursuant to Rule 56, F.R.Civ.P., for \$8,020.30 arising from its assessments against Burgers made on August 11, 1971 and March 28, 1972, plus \$120.20 in interest, on the grounds that the Government is entitled to judgment as a matter of law, there being no genuine issue of

material fact, and for an order directing plaintiff to pay to the Government the above amount.

The Government's Claim

Since the tax assessments against Burgers have not been paid, the Government has valid tax liens on all property and rights to property belonging to Burgers (Int. Rev. Code of 1954, §6321), which liens arose at the time the assessments were made (Int. Rev. Code of 1954, §6322). The federal tax liens also attach to property and rights to property acquired by Burgers subsequent to the assessments. Glass City Bank v. United States, 326 U.S. 265 (1945). Therefore, the tax liens attach to Burgers' right to receive the proceeds from its fire insurance policy. Glen Falls Insurance Co. v. Stoetzel, 1967-1 USTC ¶9308 (N.D.Calif. 1966); Ryan v. Spruce Veneer Package Corp., 175 F.Supp. 756 (W.D.Wash. 1959); Household Coal & Oil Distributors, Inc. v. H.E.D.C., Inc., 234 N.Y.S.2d 6 (Civ. Ct., N.Y.City 1962). When a notice of tax lien has been filed in the office of the Secretary of State, a federal tax lien on personal property of a corporation whose property is located in the State of New York has priority over the claims of judgment lien creditors, secured interests, and purchasers whose status as such arose subsequent to the filing of the notice and over other competing creditors unless the claim of the competing creditor meets

A00143

one of the exceptions set forth in §6323 of the Internal Revenue Code of 1954 ("Code"), Int. Rev. Code of 1954, §6323(a) and (f)(1)(A), N.Y. Lien Law, §240(2)(a) (1966). From the record, the filing of notices of tax liens on August 23, 1971 and April 10, 1972 met the above requirements of applicable federal and state law.

Hammerman's Claim

Hammerman contends that as his judgments against Burgers were obtained prior to the public filing of the tax liens of the Government, his claim has priority over the Government's. Hammerman concedes that he did not become a judgment lien creditor within the meaning of §6323(a) of the Code prior to the public filing of the tax liens but claims that he could not have become one because Burgers had no property to levy upon other than the proceeds of the insurance policy.

The Code (§6323(a)) provides that only a judgment lien creditor whose status was obtained prior to the public filings of the tax liens has priority over a properly filed federal tax lien. See Fore v. United States, 339 F.2d 70 (5th Cir. 1964), cert. denied, 381 U.S. 912 (1965). However, Hammerman concedes that he is not a judgment lien creditor as he has not taken any steps beyond obtaining and entering a money judgment. See County National Bank v. Inter-County Farmers Cooperative Assn., 65 Misc. 2d 446,

A00144

317 N.Y.S.2d 790 (Sup. Ct. Sullivan Cty., 1970); City of New York v. Hammerman, 23 App. Div. 2d 153, 259 N.Y.S.2d 284 (1st Dept. 1965).

As Hammerman's claim does not come within one of the exceptions of §6323 of the Code, the Government's liens have priority over Hammerman's claim. Int. Rev. Code of 1954, §6323.

Moses' Claim

There is no indication that Moses is a judgment lien creditor or that his claim comes within one of the exceptions to §6323 of the Code. Accordingly, the Government's tax liens have priority over Moses' claim. Int. Rev. Code of 1954, §6323.

Kent's Claim

Kent contends that as it obtained a perfected security interest in certain equipment purchased by Burgers from Kent on February 18, 1970 which date is prior to the time when the claims of all the other claimants arose, and as the proceeds of the insurance policy were assigned to Kent pursuant to the security agreement, its interest in the proceeds is superior to the Government's liens.

There is no dispute that Kent's security agreement was a perfected security agreement under the Uniform Commercial Code. However, for purposes of §6323(a) of the Code, a security interest only arises when the subject property is in existence. Int. Rev.

A00145

Code of 1954, §6323 (h) (1). As the insurance proceeds did not become payable until February 29, 1972 when plaintiff instituted this interpleader action admitting that it owed \$12,580 under the insurance contract, Kent's security interest in the proceeds did not arise till February 29, 1972, which date was after the filing of the notice of tax liens arising out of the August 11, 1971 assessments but prior to the time of the filing of the notice of tax lien arising from the March 23, 1972 assessment. Accordingly, the Government's liens from the August 11, 1971 assessments totalling \$6,395.05 have priority over Kent's claim, and Kent's claim has priority over the March 23, 1972 assessment of \$1,623.25. Int. Rev. Code of 1954, §6323(a).

Abrams' Claim

The assignment of 12 1/2% of the loss as adjusted or otherwise recovered from the plaintiff was an assignment of a future property right which did not become definite till February 29, 1972. As the Government filed notices of tax liens totalling \$6,395.05 arising from the August 11, 1971 assessment prior to the time in which the proceeds became payable, these liens have priority over Abrams' claim. United States v. Pay-O-Matic Corp., 162 F.Supp. 154 (S.D.N.Y.), aff'd sub nom. United States v. Goldstein, 256 F.2d 581 (2d Cir.), cert. denied, 358 U.S. 830 (1958);

A00146

Borstein & Co. v. Excelsior Insurance Co. of Syracuse, 25 N.Y.2d 651, 306 N.Y.S.2d 464 (1969); In Re Rosenberg's Will, 62 Misc.2d 12, 309 N.Y.S.2d 51 (Surrogate's Ct., Kings County 1970). However, as the proceeds became payable prior to the March 28, 1972 assessment, the Government concedes that Abrams' claim of \$1,572.50 (12 1/2% of \$12,580) has priority over its tax lien of \$1,625.25 arising from this assessment.

Plaintiff's Claim

As plaintiff cannot obtain any attorneys' fees, costs or expenses of this action out of the Fund till the federal tax liens have been fully satisfied, the Government's liens have priority over plaintiff's claim. United States v. State National Bank of Connecticut, 421 F.2d 519 (2d Cir. 1970).

Conclusions

In light of the foregoing, the Government has priority over all of the claimants to the Fund with respect to its tax liens totalling \$6,395.05 arising from the August 11, 1971 assessments. The Government's tax lien of \$1,625.25 arising from its March 28, 1972 assessment has priority over all of the claimants to the Fund with the exception of Kent and Abrams, whose claims total \$4,439.50. After deducting the Government's tax liens arising from the August 11, 1971 assessment and the claims of

A00147

Kent and Abrams from the Fund, there is \$1,715.45 left to pay to the Government its lien of \$1,625.25 arising from the March 22, 1972 assessment and accrued interest of \$120.20.

Accordingly, the Government's motion for summary judgment in the amount of \$8,929.30 plus \$120.20 in interest is granted.

Settle Judgment on notice.

Dated: New York, N. Y.
February 16, 1973.

DUDLEY B. BOWMAN

U. S. D. J.